

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

V.

* No. 1:19-cr-00251-LM-1
* February 11, 2020
* 12:18 a.m.

JOHNATHON IRISH,

Defendant.

* *

TRANSCRIPT OF JURY TRIAL DAY THREE

BEFORE THE HONORABLE LANDYA B. McCAFFERTY

APPEARANCES:

For the Government: AUSA Anna Z. Kraskinski
AUSA Kasey Weiland
United States Attorney's Office

For the Defendant: Benjamin L. Falkner, Esq.
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Official Court Reporter
United States District Court
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		<u>I</u>	<u>N</u>	<u>D</u>	<u>E</u>	<u>X</u>
	<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	
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P R O C E E D I N G SJURY NOT PRESENT

THE CLERK: All rise for the Honorable Court.

THE COURT: Can counsel briefly approach.

(SIDEBAR CONFERENCE AS FOLLOWS):

THE COURT: Okay. What I believe will happen, hopefully Officer LeBlanc will be able to give you advance notice, but to the extent that the Marshal can have somebody identify her ahead of time -- that might be hard, but if they can they're going to give her a warning not to disrupt anything. That would not be good for anybody, including her son. And there will be a Marshal here the entire time, and if there is any issue at all I'm going to excuse the jury and then deal with it and, obviously, seek your advice as to what you want me to do or how you want me to handle it as it happens. So, let's hope that doesn't happen. Let's hope that's just a threat, a boast.

MR. FALKNER: Right. I only point it out, your Honor, just in terms of any warning to her that it might not benefit her son. The nature of what she communicated to me was that she intended her presence not to benefit her son, so I'm not sure that that warning will be sufficient.

THE COURT: Okay. I'm glad you told me that. All right.

So, the other issue is, the more I think about it, the

1 more concerned I am about Fifth Amendment issues, potentially,
2 and I'm still researching the question. It would have been
3 very helpful if I had this briefed by counsel ahead of time,
4 but my court reporter (sic) is going to try to find counsel,
5 and then at that point, maybe at the end of the day, you can
6 assist in meeting with counsel, getting counsel up to speed, if
7 we can find somebody, in helping counsel connect with Mr. Roya
8 and then deal with that issue. So, I wanted to give you a
9 heads-up that that's what I am thinking of doing based on what
10 little I've seen.

11 MR. FALKNER: Understand.

12 THE COURT: Okay?

13 MR. FALKNER: Thank you, your Honor.

14 THE COURT: All right.

15 (END OF SIDEBAR CONFERENCE)

16 THE CLERK: All rise for the jury.

17 (The jury entered the courtroom at 12:20 p.m.)

18 THE CLERK: Please be seated.

19 THE COURT: All right. Good morning -- good
20 afternoon. We will proceed. The government may call its next
21 witness.

22 MS. WEILAND: Thank you, your Honor. The United
23 States calls Elizabeth Millett.

24 THE CLERK: Ms. Millett, before you take the witness
25 stand, though, please remain standing and raise your right

1 hand.

2 **ELIZABETH MILLETT**, having been duly sworn by the
3 Clerk, was examined and testified as follows:

4 THE CLERK: Thank you. Please state your full name
5 and spell your last name for the record.

6 THE WITNESS: Elizabeth Millett, M-I-l-l-e-t-t.

7 THE CLERK: Thank you very much. Now you can take a
8 seat on the witness stand.

9 DIRECT EXAMINATION

10 BY MS. WEILAND:

11 Q. Good morning, Ms. Millett.

12 A. Good morning.

13 Q. If you wouldn't mind adjusting that microphone just to
14 make sure we can hear everything you're saying.

15 A. Okay.

16 Q. Thank you. Ms. Millett, are you employed?

17 A. No.

18 Q. Where do you live?

19 A. Kittery, Maine.

20 Q. Do you know Johnathon Irish?

21 A. Yes.

22 Q. How do you know him?

23 A. He's married to my daughter.

24 Q. Is your daughter's name Stephanie?

25 A. Yes.

1 Q. How long have they been married?

2 A. I'm honestly not sure. A few years. They've known each
3 other a long time.

4 Q. Approximately how many years would you say that you've
5 known Mr. Irish?

6 A. Eight. I'm not positive.

7 Q. Are Mr. Irish and your daughter currently separated?

8 A. Yes.

9 Q. I want to direct your attention to December of 2018.
10 Where were Mr. Irish and your daughter Stephanie living at that
11 time?

12 A. I believe it was Bethlehem, New Hampshire.

13 Q. Okay. Who else lived in their home?

14 A. Pardon?

15 Q. Did anyone else live in the home with your daughter and
16 Mr. Irish?

17 A. Three children.

18 Q. Okay. Did you visit them at their home sometime around
19 the holidays, in December of 2018?

20 A. Yes.

21 Q. And at some point during that visit do you recall ever
22 seeing Mr. Irish with a firearm?

23 A. Yes.

24 Q. Could you describe that incident, please?

25 A. I believe it was the week -- around the week before

1 Christmas. I had taken gifts up, and I noticed that there was
2 a small gun, pistol, whatever it's called, on like the back of
3 his waistline.

4 Q. Okay. Let me just stop you for a moment. Where were you
5 when you made this observation?

6 A. I believe it was the living room.

7 Q. You were inside the living room?

8 A. Yes.

9 Q. Okay. Who else was there?

10 A. Stephanie, the kids. I believe his mother and dad were
11 there.

12 Q. Okay.

13 A. I think so.

14 Q. Was this like a holiday get-together of sorts?

15 A. I was just going to take the gifts up to them, and that
16 was about, you know, the only time I had to see them because I
17 think, you know, they do Christmas together.

18 Q. Okay. And so, you said that you were in the living room.
19 Where was Mr. Irish?

20 A. He was in the living room also.

21 Q. Okay. And how did it come to be that you observed, you
22 said it was something in his waistband?

23 A. He was just walking around in the room.

24 Q. Okay. And you said you observed -- you said you believe
25 it was a pistol?

1 A. Yeah.

2 Q. Are you familiar with firearms?

3 A. A little bit, but not that much. I know I never cared for
4 them, but, I mean, I just know small ones, and I call them
5 "pistols" or whatever, and the big ones I just refer to as
6 "rifles" (indicating).

7 Q. Okay?

8 A. That's about all I know.

9 Q. Do you recall what color it was?

10 A. No, I don't.

11 Q. Okay. And when you say you saw it in his waistband, do
12 you remember was it stuck inside his pants, or was it in a
13 holster of some type?

14 A. I believe it was stuck in his pants.

15 Q. Okay. Did you at any point observe Mr. Irish remove the
16 firearm from his waistband?

17 A. I saw it on him, and he at some point went into another
18 room, and when he came back it was not on him.

19 Q. Okay. Did you see where he put it?

20 A. I did not.

21 Q. Did you see what room he went into?

22 A. I believe it was the room off the dining room. I think
23 the living room, then dining room, and I think maybe the
24 kitchen was off that way.

25 Q. Okay. Did there come a time shortly after that visit when

1 the topic of firearms came up in conversation between you and
2 Mr. Irish?

3 A. There was a time between Christmas and New Year's, I
4 believe, that my daughter had left him and he called me
5 numerous times, and one of the conversations --

6 Q. Can I stop you for a moment? You say he called you
7 numerous times. Was this numerous times in a single day or
8 over the course of --

9 A. Like, one evening and the following morning.

10 Q. Okay. I'm sorry. Go ahead. What was the purpose of his
11 repeated calls?

12 A. Well, he had been calling, wanting me to pick up the
13 grandchildren, and then in one brief conversation he had also
14 asked me to help him remove the guns.

15 Q. Did you agree to pick up your grandchildren?

16 A. I told him I could not come up that night. It was late,
17 it was dark, it was a long drive, and I had taken a sleeping
18 pill already, and I was not going to do any driving that night.

19 Q. You take a sleeping aid at night to help you sleep?

20 A. I do.

21 Q. And this was after you had taken that for the evening that
22 you received this phone call from Mr. Irish?

23 A. I had already taken it before the phone call.

24 Q. Okay. Did you agree to get the children at a later time?

25 A. I said I would be up the next morning.

1 Q. Okay. And do you recall whether it was the phone call
2 that evening or the following morning where he asked you to
3 also remove the guns from the home?

4 A. I'm not positive, but I think it was the evening that he
5 had mentioned removing and, again, you know, he only mentioned
6 it one time as far as removing them.

7 Q. Okay?

8 A. And the following morning I believe he told me that I
9 would not have to do that, as that had already been taken care
10 of.

11 Q. Okay. Did you ask him anything more about what he meant
12 by that, about it had been taken care of?

13 A. No.

14 Q. Okay. Did you understand that to mean that the guns had
15 been removed from the home?

16 A. That's what I thought it to mean.

17 Q. Did there come a time when you cut off contact with
18 Mr. Irish?

19 A. Yes, I had, you know.

20 Q. Do you recall approximately when that was?

21 A. I'm not positive. It might have been March.

22 Q. Okay. Did something happen in March?

23 A. I had just been getting numerous calls from him, this,
24 that, and they weren't nice, and I felt the need for a
25 restraining order. I talked to my lawyer about what had been

1 going on, and he suggested it, you know.

2 Q. Okay. So, if I'm understanding you correctly, is it your
3 testimony, then, that you sought a restraining order against
4 Mr. Irish?

5 A. Can you repeat that, please?

6 Q. You got a restraining order against Mr. Irish?

7 A. I did.

8 Q. Okay. And that occurred you think approximately --

9 A. Mid-March, maybe.

10 Q. March? And we're talking March of 2019?

11 A. '19.

12 Q. Okay. After you got that restraining order did your
13 contact with Mr. Irish diminish?

14 A. Yes.

15 Q. Did you have any occasion to visit with him or talk with
16 him after that?

17 A. No.

18 Q. Okay. In connection with that restraining order did you
19 have to fill out paperwork with the Court related to that
20 restraining order?

21 A. In order to get that, yes.

22 Q. Okay. And as part of the information that you provided to
23 the Court, do they ask you, and I'm not asking you to tell me
24 your answers to these questions, but do they ask you general
25 information about your interactions with the defendant, your

1 familiarity with him and things of that nature?

2 A. Can you rephrase it?

3 Q. Yes. Do they ask you questions about the defendant in the
4 paperwork?

5 A. In the paperwork, yes.

6 Q. Okay. Does one of those questions relate to firearms?

7 A. I think so.

8 Q. You said you "think so." Do you remember whether the form
9 included a question about firearms?

10 A. I think it asked if he had firearms at that time.

11 Q. Okay. And do you remember how you answered that question?

12 MR. FALKNER: Objection. It's hearsay, your Honor.

13 THE COURT: Sustained.

14 Q. Ms. Millett, did there come a time when the FBI reached
15 out to ask you some questions regarding Mr. Irish?

16 A. Yes.

17 Q. Do you remember approximately when your first contact with
18 the FBI was?

19 A. I believe it was in January of '19.

20 Q. Okay. Would it have been after your visit at
21 Christmastime that you described?

22 A. After.

23 Q. Okay. Was it also after the phone call you described
24 where Mr. Irish asked you to remove guns from his home?

25 A. Yes.

1 Q. And during your initial interview with the FBI did you
2 tell them about that visit at Christmastime?

3 MR. FALKNER: Objection.

4 THE COURT: Sustained.

5 Q. At some point did the FBI speak with you about working as
6 a confidential human source?

7 A. Yes.

8 Q. What did you understand that to mean?

9 A. They just basically wanted to know if I happened to see
10 him with weapons or mentioning them.

11 Q. And as far as your understanding of your role, if you were
12 to come into any information about either seeing Mr. Irish with
13 firearms or having conversations with him about firearms, what
14 was your sort of role supposed to be in terms of assisting the
15 FBI?

16 A. Letting them know, recording, perhaps taking a picture.

17 Q. Okay. Did you ever make any recordings of the defendant?

18 A. No. No.

19 Q. Did you ever take any pictures of the defendant?

20 A. No.

21 Q. Did you ever take any pictures of any firearms belonging
22 to the defendant?

23 A. No.

24 Q. Okay. Did you agree to attempt to gather information and
25 to work as a confidential source?

1 A. Yes.

2 Q. Why did you do that?

3 A. Just that I didn't want to feel any danger from any of
4 that or --

5 Q. Were you -- backing up, did this arrangement between you
6 and the FBI, did that come about during your very first
7 interview with the FBI, or was that at a later time?

8 A. I'm not positive. I think later.

9 Q. Whose idea was it?

10 A. Whose idea for?

11 Q. Who first broached the topic of you working in this
12 capacity? Was that something that you volunteered to do, or
13 was that something that the FBI asked whether you would be
14 willing to do?

15 A. They asked if I would be willing to.

16 Q. Okay. Were you ever paid any money in exchange for your
17 assistance?

18 A. No.

19 Q. Did you ever expect to be paid?

20 A. No.

21 Q. Were you promised anything of value in exchange for your
22 assistance?

23 A. Nothing.

24 Q. Are you receiving anything in exchange for your testimony
25 here today?

1 A. No.

2 Q. Ms. Millett, do you know an individual by the name of
3 Peter Duguay?

4 A. Who?

5 Q. Peter Duguay?

6 A. I don't believe so.

7 Q. What about David Marcotte?

8 A. I don't think so.

9 Q. Roscoe Whitney?

10 A. I don't recognize the last name.

11 Q. Have you met an individual named Roscoe before?

12 A. I have.

13 Q. Where did you meet him?

14 A. I believe at the campground.

15 Q. What campground are you referring to?

16 A. Saddleback.

17 Q. Do you know this person named Roscoe? Do you remember how
18 many occasions you might have met him?

19 A. A few. Five or six, perhaps.

20 Q. And did you have any in-depth interactions with him during
21 any of those meetings?

22 A. Just as, you know, get-togethers, I mean.

23 Q. Was this -- if I'm understanding you correctly, were these
24 interactions in the context of family --

25 A. Like a birthday party or, you know, lunch.

1 Q. Okay. Would that -- would your interactions with Roscoe,
2 the person you know as "Roscoe," did those interactions take
3 place -- was the defendant also present at those functions?

4 A. I believe so.

5 Q. Was the defendant's mother also present at those
6 functions?

7 A. Yes.

8 Q. Did you ever talk with Roscoe about firearms?

9 A. No.

10 Q. Have you ever had any conversations with Roscoe on the
11 telephone?

12 A. No.

13 Q. Do you know an individual named Neil Prive?

14 A. No.

15 Q. What about Dylan Roosa?

16 A. I've heard a name "Dylan."

17 Q. To your knowledge --

18 A. I'm not sure. If I met him, it was very briefly and just
19 didn't recall where. It might have been briefly at their house
20 at some point.

21 Q. And by "their house," are you referring to Stephanie and
22 Mr. Irish's house?

23 A. I'm trying to remember where it might have been. It might
24 have been at where they're living or were living.

25 Q. Do you recall ever having any conversations with Mr. Roosa

1 about firearms?

2 MR. FALKNER: Objection. Relevance, your Honor.

3 THE COURT: Overruled.

4 Q. Do you recall having any conversations with Mr. Roosa
5 about firearms?

6 A. No.

7 Q. Do you know an individual named Gary or Gerald Roya?

8 A. No.

9 MS. WEILAND: May I have just a moment, your Honor?
10 No further questions, your Honor.

11 THE COURT: All right. Attorney Falkner.

12 CROSS-EXAMINATION

13 BY MR. FALKNER:

14 Q. Good afternoon, Ms. Millett.

15 A. Good afternoon.

16 Q. On direct examination you said you believe that you knew
17 Mr. Irish eight years or so.

18 A. It might be more. I'm not positive. It had to be more,
19 thinking of the granddaughter, yes.

20 Q. More like 13, right?

21 A. Yes. Right.

22 Q. And fair to say that you don't approve of your daughter's
23 marriage to Johnathon Irish?

24 A. Pardon?

25 Q. Fair to say that you don't approve of your daughter's

1 marriage to Johnathon Irish?

2 A. There were mixed feelings.

3 Q. Fair to say that you felt that Johnathon and Stephanie
4 were draining you financially?

5 A. Yes.

6 Q. In fact, you told that to the FBI, didn't you?

7 A. Yes.

8 Q. And, in part, you felt that they were draining you
9 financially because you had recently bought them a home to live
10 in, correct?

11 A. I did buy a home for them.

12 Q. And when was that?

13 A. That was in January of '19.

14 Q. And that cost you some money, right?

15 A. Yes.

16 Q. And you also felt that they were asking you for money a
17 lot, right?

18 A. Yes.

19 Q. And you also felt that they were asking for money from an
20 inheritance, correct?

21 A. Correct.

22 Q. And you told the FBI that those were some of the reasons
23 why you wanted to cooperate with them; isn't that so?

24 A. No.

25 Q. You told the FBI all of those things, though, didn't you?

1 A. Can you repeat that, please?

2 Q. You did tell the FBI all of those things that we've just
3 discussed, though, didn't you?

4 A. I did.

5 Q. And you told that to them in January of 2019, correct?

6 A. I think so.

7 Q. And at the time that you signed up to be a confidential
8 human source; isn't that so?

9 A. I think it was that time or around then.

10 Q. Now, you told the FBI that it was right around the time of
11 Christmas that you saw Johnathon with the handgun in his
12 waistband; is that right?

13 A. Yes.

14 Q. And the phone call that he made about getting the guns out
15 of the house, that he needed to get rid of them, that was also
16 in December of 2018 as well, correct?

17 A. Correct.

18 Q. Other than Johnathon saying he didn't need any more help
19 with that, you didn't have any indication whatsoever as to
20 whether the guns were or were not out of the house at that
21 time, did you?

22 A. After he said that, I did not know that he had the guns.

23 Q. In fact, you dropped out of communication with Stephanie
24 and Johnathon in January of 2019, correct?

25 A. Pretty much.

1 Q. But even though you dropped out of communication with
2 Johnathon and Stephanie, you continued to meet with the FBI on
3 a fairly regular basis, right?

4 A. It wasn't a regular basis.

5 Q. Well --

6 A. It was now and then. I'm not sure how often. It wasn't
7 all that often.

8 Q. The first time you met with them was January 16th, right?

9 A. Mm-hmm.

10 Q. Is that a "Yes"?

11 A. I believe so, or right around there, yes.

12 Q. And then the second time you met with them was January
13 24th of 2019, right?

14 A. Okay.

15 Q. Is that correct?

16 A. I think so.

17 Q. And then the next time you met with them was February 15th
18 of 2019, and that was by telephone, right?

19 A. I believe so.

20 Q. And that was right around the time when they moved from
21 Bethlehem into the home in Littleton, correct?

22 A. Correct.

23 Q. Were you a party to the move?

24 A. I helped them monetarily and watching the children while
25 they moved.

1 Q. You told the FBI that the move occurred on February 1st of
2 '18, correct?

3 A. I wasn't sure exactly of the actual date moved in.

4 Q. Okay. But you testified -- or I'm sorry. I should take
5 that back. You did tell the FBI that there was a move in early
6 February of '18, correct?

7 A. I believe it was early February of '19.

8 Q. And I'm sorry. I said "'18," and you responded "'19." It
9 was 2019, correct?

10 A. '19.

11 Q. And you also told the FBI that at that time no firearms or
12 any other items of note were observed; isn't that so?

13 A. If I did -- can you rephrase that, reword it, say it
14 again?

15 Q. When you spoke to the FBI on February 15th of 2019, and
16 you described the move, you told the FBI agent on the telephone
17 that at the time of the move no firearms or any other items of
18 note were observed; isn't that so?

19 A. Correct. I did not observe any at the time.

20 Q. And so, were you at the Littleton home during the move?

21 A. For a short time, yes.

22 Q. The next time that you spoke with the FBI was on April 3rd
23 of 2019, right?

24 A. I'm not sure of the date.

25 Q. Well, it was right around the time that you got the

1 restraining order, right?

2 A. I'm honestly not sure.

3 Q. Did you report to the FBI after you got the restraining
4 order?

5 A. I don't remember, to be honest.

6 Q. When you got the restraining order against Johnathon
7 Irish, you also at the same time got one against Stephanie
8 Irish, right?

9 A. I did.

10 Q. From the time of the move into Littleton up until the time
11 you got that restraining order was there any contact whatsoever
12 between you and Johnathon Irish?

13 A. After the restraining order, no.

14 Q. No. I'm talking about from the move up until the time you
15 got the restraining order.

16 A. I think there were phone calls.

17 Q. And what about was there contact with Stephanie Irish
18 during that same time period?

19 A. Yes.

20 Q. Other than Johnathon just simply having told you that it
21 was taken care of, up until the date that you got the
22 restraining order did you know what happened to the firearm
23 that you had seen in Johnathon Irish's waistband?

24 A. No.

25 Q. As far as you knew, he still had that firearm, correct?

1 A. I did not know if he had the firearm.

2 Q. As far as you knew, you didn't have any reason to believe
3 he didn't have it, correct?

4 A. No.

5 Q. Let me put it to you another way. Did you believe him to
6 be the owner of the firearm that was in his waistband?

7 A. For him to be the owner of the weapon in the waistband?

8 Q. Right. Did you believe him to be the owner of that
9 weapon?

10 A. I did.

11 Q. And you hadn't received any information that he had sold
12 it or given it away, had you?

13 A. No.

14 Q. And, nonetheless, when you applied for the restraining
15 order -- let me put it in a different way. When you applied
16 for the restraining order, you signed that under oath, correct?

17 A. I believe so.

18 Q. The same oath that you gave here to the jury, correct?

19 A. Pardon?

20 Q. The same oath that you gave here to the jury, correct?

21 You swore to tell the truth when you signed the application,
22 correct?

23 A. Yes. I would only do that.

24 Q. And in that application you were specifically asked
25 whether Mr. Irish had access to, possessed or had ever used a

1 firearm, muzzle-loading firearm, bow or crossbow in an
2 intimidating, threatening or abusive way, and you answered to
3 all of those questions, "No," correct?

4 A. I am not sure.

5 MR. FALKNER: Your Honor, may I approach the witness?

6 THE COURT: Yes.

7 Q. Ms. Millett, I've placed a document in front of you. Can
8 you take a look at it.

9 A. (Witness complied).

10 Q. Do you recognize that document?

11 A. Yes.

12 Q. Do you recognize that to be the first two pages of the
13 application for restraining order against Johnathon Irish?

14 A. Yes.

15 Q. And if you look at Page 2 at the very top -- are you on
16 Page 2?

17 | A. Yes.

18 Q. And I'm looking at Question 10: "Does the defendant have
19 access to, possess or ever used a firearm, muzzle-loading
20 firearm, bow or crossbow in an intimidating, threatening or
21 abusive way?" And your answer was, "No." Have I got that
22 right?

23 A. "No" is checked.

24 Q. And, "If yes, please explain," and you wrote, "Has owned a
25 firearm in the past."

1 A. Right, and I was not sure --

2 Q. Is that what you wrote?

3 A. That is what I wrote.

4 Q. And is that in your handwriting?

5 A. Pardon?

6 Q. Is that your handwriting?

7 A. No.

8 Q. Whose handwriting -- do you know whose handwriting it is?

9 A. Yes.

10 Q. Whose handwriting is it?

11 A. It is my daughter-in-law's, because I wasn't in order. I
12 was told that she could write what I said, that the court --

13 Q. But ultimately you signed the document, correct?

14 A. Yes.

15 Q. And you read that document, correct, before you signed it?

16 A. I was very highly emotionally at that time, and --

17 MR. FALKNER: Your Honor, may I approach the witness?

18 THE COURT: Yes.

19 MR. FALKNER: Just to take the document back, ma'am.

20 A. Pardon?

21 Q. Just to take the document back. Thank you.

22 You were highly emotional because you were upset at
23 the way Johnathon, you felt that Johnathon and Stephanie were
24 treating you about money and other things, right?

25 A. That's only part of it.

1 Q. And you were upset because you felt that Stephanie's
2 relationship with Johnathon was keeping Stephanie away from
3 you, correct?

4 A. No. No.

5 Q. And you felt that you were sick of giving them money,
6 correct?

7 A. That I will agree to.

8 Q. And, ultimately, it ended up -- that in the family courts
9 of New Hampshire there ended up being cross-complaints,
10 correct?

11 A. Can you rephrase that?

12 Q. Well, at some point Stephanie Irish took out a complaint
13 against your son, and you were involved in those proceedings
14 with the same lawyer, correct?

15 A. Can you rephrase that?

16 Q. Your restraining order against Stephanie and your
17 restraining order against Johnathon, at some point -- strike
18 that.

19 At some point there ended up being restraining orders
20 filed by Stephanie against your son; isn't that correct?

21 A. Right. Yes.

22 Q. And there was a hearing on that in the Littleton Probate
23 and Family Court in May, correct?

24 A. Yes.

25 Q. And Stephanie had some kind of medical issue during that

1 hearing, correct?

2 A. Right.

3 Q. And they had also, Johnathon and Stephanie had brought
4 complaints against you having to do with the care of the home
5 that they were living in, correct?

6 A. Yes.

7 Q. Landlord-tenant complaints, essentially, correct?

8 A. Can you reword that again, say it again, please?

9 Q. Johnathon and Stephanie brought landlord-tenant complaints
10 against you vis-a-vis the home that you had bought for them;
11 isn't that right?

12 A. They actually were never landlords. They never paid any
13 money on that. I just let them live in my --

14 Q. Ma'am, listen to my question. My question was whether
15 Johnathon and Stephanie brought landlord-tenant complaints.

16 A. I think they did.

17 Q. And those complaints were heard in the same hearing --

18 A. Yes.

19 Q. -- with Stephanie's complaint against your son, correct?

20 A. Yes.

21 Q. And all of this was extremely upsetting to you, correct?

22 A. Yes.

23 Q. And in that May 4th hearing, again, Stephanie had
24 basically had a seizure in the middle of the courtroom; isn't
25 that so?

1 A. And that was at Littleton?

2 Q. In May 2019.

3 A. I think so.

4 Q. And ultimately that hearing was continued to sometime in
5 September of 2019, correct?

6 A. I'm not positive, but I think so, yes.

7 Q. September 4th of 2019, correct?

8 A. Yes.

9 Q. Is that right?

10 A. Yes.

11 Q. And during that hearing Stephanie continued to press
12 claims that she didn't want to have any contact with her
13 brother, who's your son, correct?

14 A. Correct.

15 Q. And he was living with you?

16 A. Yes.

17 Q. And --

18 MS. WEILAND: Your Honor, may we approach?

19 THE COURT: Yes.

20 (SIDEBAR CONFERENCE AS FOLLOWS):

21 THE COURT: Where is this going?

22 MR. FALKNER: I'm almost done with this line of
23 questioning, your Honor. This is simply establishing bias.
24 She was represented by the same lawyer as the brother at those
25 proceedings and establishing the animosity.

1 THE COURT: The brother and --

2 MR. FALKNER: Yes, your Honor. She testified that
3 Stephanie --

4 THE COURT: Let me just ask you a factual question.
5 She testified in a way that was inculpatory to your client
6 about something she saw in I think 2018, saw a pistol?

7 MR. FALKNER: Correct.

8 THE COURT: All of this postdates that. Am I wrong
9 about that?

10 MR. FALKNER: That's correct.

11 THE COURT: So, how is it relevant to her bias with
12 respect to those statements? That's just an ongoing --

13 MR. FALKNER: With respect to her bias in this
14 courtroom currently and as a witness currently.

15 THE COURT: Okay. What was --

16 MS. WEILAND: Well, your Honor, we were delving, it
17 seems, into matters in the last series of questions -- I've not
18 heard anything about the defendant, Mr. Irish, at all; it's all
19 about Stephanie and the brother. And I understand that some of
20 this family history is relevant to show that there may be some
21 bad blood, some possible bias, but to the extent we're getting
22 into allegations regarding animosity between the witness and
23 her daughter and drama that might exist between the daughter
24 and the brother and a lawyer, I'm not sure how that goes to
25 show bias against Mr. Irish.

1 THE COURT: I might try it differently than he -- I
2 might try it differently than you, but as long as you're
3 closing this very soon, I overrule your objection. Go ahead.

4 MR. FALKNER: Thank you.

5 (END OF SIDEBAR CONFERENCE)

6 Q. So, I just want to quickly -- I'm not going to the merits
7 of any of these complaints. I just want to establish what the
8 hearing -- who the parties were to the hearing on September 4th
9 of 2019. There were multiple claims, correct?

10 A. Yes.

11 Q. And one of the claims was by Johnathon and Stephanie
12 against you, and that was a landlord-tenant claim, correct?

13 A. Yes.

14 Q. And there was a second claim by Stephanie Irish against
15 her brother, your son, correct?

16 A. Yes.

17 Q. And at that time you and your son were living together,
18 correct?

19 A. Yes.

20 Q. And at that hearing you and your son were represented by
21 the same attorney, correct?

22 A. Yes.

23 Q. And at that hearing, in order to make the landlord-tenant
24 claims go away, you agreed to simply deed the property over to
25 Stephanie and Johnathon; isn't that right?

1 A. Yes. It was a quitclaim deed.

2 Q. Did that ever get registered?

3 A. Pardon?

4 Q. Did that ever get filed, the quitclaim deed?

5 A. No.

6 Q. Do you retain ownership, then, of that home?

7 A. Yes.

8 Q. So, I just want to be clear. You made an agreement to
9 resolve the landlord-tenant claims by deeding the property
10 over, but you never actually deeded the property over, correct?

11 A. She was given the quitclaim deed in that court.

12 Q. Now, at some point in late October of 2019 Stephanie left
13 Johnathon, correct?

14 A. Yes.

15 Q. And is that when you and Stephanie began having regular
16 contact again?

17 A. We started having conversations, yes.

18 MR. FALKNER: Your Honor, may I have a moment?

19 THE COURT: Yes.

20 MR. FALKNER: I have nothing further, your Honor.

21 THE COURT: Anything further, Attorney Weiland?

22 MS. WEILAND: Yes.

23 REDIRECT EXAMINATION

24 BY MS. WEILAND:

25 Q. Ms. Millett, you were asked some questions about

1 statements you made to the FBI, one of them being that
2 Mr. Irish and your daughter were, quote, unquote, draining you
3 financially. Is that what you told the FBI?

4 A. It was starting to cause a hardship, yes.

5 Q. So, you were providing them with some form of financial
6 assistance?

7 A. Right.

8 Q. And part of that was buying them a house?

9 A. I bought the house so that my daughter and her family
10 would have a place to live.

11 Q. Since your daughter and Mr. Irish have been separated have
12 you continued to provide financial support to your daughter and
13 your grandchildren?

14 A. I have some.

15 Q. You were also asked about various contacts that you had
16 with the FBI after the time that you had sort of cut off
17 contact with Mr. Irish, correct?

18 A. Can you repeat that, please?

19 Q. Yes. Attorney Falkner asked you about any conversations,
20 phone calls you might have had with the FBI after you agreed to
21 be a confidential source, correct?

22 A. Yes.

23 Q. And some of those took place after the restraining order
24 or after you weren't really in contact, really, with Stephanie
25 or Mr. Irish much at all anymore; is that correct?

1 A. Yes.

2 Q. And in any of those conversations did you ever report that
3 you had seen Mr. Irish with firearms apart from the, you know,
4 incident that you described in December of 2018 and the phone
5 call in January?

6 A. No.

7 Q. Any other incidents that you ever reported to the FBI?

8 A. No.

9 Q. Okay. Now, Attorney Falkner asked you some questions
10 about the paperwork that you filled out in connection with the
11 restraining order.

12 A. Mm-hmm.

13 MS. WEILAND: May I approach, your Honor?

14 THE COURT: Yes.

15 Q. And I believe the document that Attorney Falkner was
16 asking you about inquires whether the defendant either has
17 access to or possesses or has ever used in a threatening manner
18 a firearm or a crossbow. The way this form is structured, how
19 many different options are you given in terms of how to answer
20 that question?

21 A. There's, like, several questions type of thing, but it's
22 only a "Yes" or a "No."

23 Q. And is it like a checkbox, you check one box or the other?

24 A. Yes, checkbox.

25 Q. And at that time, when you were filling out this

1 paperwork, did you know whether the defendant had access to a
2 firearm?

3 A. At this time I did not know if he had one or not.

4 Q. Did you know whether he possessed a firearm at this time?

5 A. Not at that time.

6 Q. Okay. And if I may? Thank you.

7 With respect to the question about ever used a firearm
8 in a threatening manner, had you ever seen Mr. Irish threaten
9 anyone with a weapon, point a gun at somebody, or use it in a
10 threatening way?

11 A. Not that I saw him with it.

12 Q. Okay. Thank you. You described a single incident in
13 December of 2018 where you simply saw it in his waistband,
14 correct?

15 A. Mm-hmm.

16 Q. And you did not perceive that to be threatening?

17 A. No.

18 Q. Okay. Now, also in this same paperwork, just below that
19 there is -- although you're given only the checkbox "Yes" or
20 "No," there is a line where it gives you an opportunity to
21 explain your response; is that correct?

22 A. Yes.

23 Q. And you wrote something on that line, didn't you?

24 A. Yes.

25 Q. Do you recall what you wrote on that line?

1 A. Something to the effect that he had firearms in the past
2 that I had seen.

3 Q. Okay. And also in connection with that same paperwork I
4 believe we went over in direct, there was an additional form
5 that you filled out. Do you recall filling out that form?

6 A. Yes.

7 Q. And directing your attention to the highlighted portion,
8 does this portion also ask you about firearms?

9 A. Yes.

10 Q. Is this question a check-the-box, yes-or-no question, or
11 is this a question that's structured in a way that just asks
12 you to write in a response?

13 A. Where I could write something.

14 Q. Okay. And the question is, "Does the defendant own
15 firearms?" Did you write a response to that question?

16 A. I said, "Not sure."

17 Q. I'm sorry?

18 A. I said, "Not sure."

19 Q. Okay. Why did you write that you were not sure?

20 MR. FALKNER: Objection.

21 THE COURT: Overruled.

22 Q. Why did you write that you were not sure?

23 A. Because I don't know whether he did or not. He may have,
24 I mean, and he may not have.

25 Q. Okay. And to be clear on the timeline, you were filling

1 out this form -- this was after the phone call you described
2 where he had asked you with assistance removing guns from the
3 home; is that correct?

4 A. Yes.

5 Q. The last thing I'll ask you about very briefly, Attorney
6 Falkner asked you questions about various court proceedings you
7 had involving your daughter, Mr. Irish, things that took place
8 in May of 2019 and then again in September of 2019, and I just
9 want to be clear. All of those court proceedings took place
10 after the Christmas incident you described where you saw
11 Mr. Irish with the firearm; is that correct?

12 A. Yes.

13 Q. And that also occurred after you received the phone call
14 from Mr. Irish asking you to help him remove firearms from the
15 home?

16 A. Yes.

17 Q. And that also occurred after you reported both of those
18 incidents to the FBI, correct?

19 A. Yes.

20 MS. WEILAND: No further questions, your Honor.

21 THE COURT: Anything else?

22 MR. FALKNER: Very briefly, your Honor.

23 THE COURT: Okay.

24 RECROSS-EXAMINATION

25 BY MR. FALKNER:

1 Q. With regard to the form that I asked you about on the
2 cross-examination, where you answered "No" to whether he has
3 access to a firearm, the following line says, "If yes, please
4 explain," and there's room to write in an answer, correct?

5 A. May I see it again, please?

6 MR. FALKNER: May I approach, your Honor?

7 THE COURT: Yes.

8 A. Okay. And the question again?

9 Q. The question is, is there room for you to explain your
10 answer to the checkbox?

11 A. Yes.

12 Q. And your answer to the checkbox was, "No"?

13 A. Correct.

14 Q. And your answer to explaining further was that, "He has
15 owned a firearm in the past," correct?

16 A. Correct.

17 Q. Your answer was not that you were unsure whether he has
18 access to firearms, correct?

19 A. Correct.

20 MR. FALKNER: May I approach, your Honor?

21 THE COURT: Yes.

22 Q. Now, on your redirect examination you were asked whether
23 in any of your conversations with the FBI after the time of
24 this restraining order you had ever told the FBI about
25 Johnathon ever possessing firearms again, correct?

1 A. Can you repeat that? I'm confused.

2 Q. Let me ask it to you a different way. Do you recall
3 speaking on the telephone with Agent Shayne Tongbua on April
4 3rd of 2019?

5 A. I'm not sure exactly the dates I spoke with him.

6 MR. FALKNER: Your Honor, may I approach the witness?

7 THE COURT: Yes.

8 Q. I'm showing you a document -- I'm not asking you whether
9 you recognize it. I'd like you to take a look at it, and when
10 you've finished reading, let me know.

11 A. (Witness reviewed document).

12 Q. Does reading that document refresh your memory as to
13 whether you spoke with Agent Tongbua on the phone on April 3rd,
14 2019?

15 A. Mm-hmm.

16 Q. Did you speak with him on that date?

17 A. Yeah.

18 Q. And did you tell him, "Without a doubt Johnathon Irish
19 still has his guns in the new house, despite being a felon. He
20 probably keeps them in a cedar chest in the bedroom"?

21 A. I do not remember saying, "Without a doubt" that he still
22 had them, but I had been told that that's probably where they
23 were.

24 Q. You don't remember that, saying that, or do you deny
25 saying that?

1 A. I do not remember saying "without a doubt" he had them.

2 Q. Did you say the rest of the statement?

3 A. I had been told that that's where they thought they were.

4 MR. FALKNER: Your Honor, may I approach the witness?

5 THE COURT: Yes.

6 Q. The first time that you gave Johnathon and Stephanie Irish
7 money was before Christmas in 2018, correct?

8 A. Mm-hmm.

9 Q. The first time you started financially supporting them was
10 before Christmas of 2018, correct?

11 A. Yes, yes.

12 Q. And the first time that you felt that they were taking
13 advantage of you was before Christmas of 2018, correct?

14 A. Right.

15 Q. And the first time that Stephanie had made allegations
16 against her brother was before Christmas of 2018, correct?

17 A. Yes.

18 Q. Even though the first time you told the FBI was in January
19 of 2019, all of those issues existed before Christmas of 2018;
20 isn't that so?

21 A. Yes.

22 MR. FALKNER: I have nothing further, your Honor.

23 THE COURT: Anything further?

24 MS. WEILAND: No, your Honor.

25 THE COURT: All right. Ms. Millett, you may be

1 excused and step down. Thank you.

2 (Witness stepped down)

3 THE COURT: And the government may call its next
4 witness, and then if counsel could approach briefly while the
5 witness is coming in.

6 MS. WEILAND: Yes, your Honor. The United States
7 calls David Marcotte.

8 (SIDEBAR CONFERENCE AS FOLLOWS):

9 THE COURT: I can get -- Don Kennedy can come in at
10 2:30, but I have no idea when Roya would be.

11 MS. KRASINSKI: He should be here by then.

12 THE COURT: So, should we get Don Kennedy to speak to
13 him? We'll need to take a break so you can get Kennedy up to
14 speed.

15 MS. KRASINSKI: If we could take a break also we can
16 get him copies of the documents, which we just can't do in the
17 courtroom.

18 THE COURT: Right. I'm planning on taking a break at
19 2:00. Does that give everybody enough time? At least tell
20 Kennedy to go ahead and come in. And then I want to take at
21 least an hour and 20 minutes before the first break, so we'll
22 break at 2:00.

23 THE CLERK: He can be here at 2:30.

24 MS. KRASINSKI: We'll need time. Thank you, your
25 Honor.

1 (END OF SIDEBAR CONFERENCE)

2 THE CLERK: David Marcotte?

3 THE WITNESS: Yes.

4 **DAVID MARCOTTE**, having been duly sworn by the Clerk,
5 was examined and testified as follows:

6 THE CLERK: Thank you. Please state your full name
7 and spell your last name for the record.

8 THE WITNESS: David Marcotte. Spelling of my last
9 name, M-a-r-c-o-t-t-e.

10 THE CLERK: Thank you very much. Please be seated.

DIRECT EXAMINATION

12 BY MS. WEILAND:

13 Q. Good afternoon, Mr. Marcotte.

14 A. Good afternoon.

15 Q. Mr. Marcotte, are you employed?

16 A. No, I'm not.

17 Q. Were you previously employed?

18 A. By the United States Army.

19 Q. Okay. When did you serve?

A. From '84 to '92. Then, aff

21 2007, when I was medically discharged -- medically retired.

22 Q. Thank you for your service. Are you familiar with
23 firearms?

24 A. Very familiar.

25 Q. Do you know Johnathon Irish?

1 A. Yes. I don't know him that well, though.

2 Q. How did you meet Mr. Irish?

3 A. Through a mutual friend we had, Anthony Costello.

4 Q. Anthony Costello. Where is Anthony Costello today?

5 A. He passed away two years ago this past January.

6 Q. Okay. So, that would be January of 2018?

7 A. Yes, ma'am.

8 Q. Okay. Were you close with Tony?

9 A. Yes. I was like an Army dad to him. He was in my unit,
10 and I took him under my wing, a new soldier coming in.

11 Q. And do you recall when you met Mr. Irish?

12 A. I think it was right around 2017, once at Tony's house.

13 Q. Okay. Did you become friendly?

14 A. Not really, because I guess he was living down south, in
15 the southern part of the state, and I just met him that one
16 time, then ran into him again after Anthony passed away.

17 Q. Okay. Tell me about that. When after Tony passed away
18 did you bump into Mr. Irish?

19 A. At Anthony's house, you know, consoling his wife Erica.
20 You know, he came to console her as well.

21 Q. So, very shortly after Tony passed away?

22 A. Yes.

23 Q. Okay. At that point did you and Mr. Irish establish a
24 friendship?

25 A. No. It would be just seeing him every now and then, "Hi,

1 how are you doing?" That's it.

2 Q. So, more like acquaintances?

3 A. Yes, ma'am.

4 Q. Okay. Did you ever socialize with Mr. Irish?

5 A. My wife and I, we started socializing with Mr. Irish and
6 his wife in October. We ran into them at Walmart. We were
7 just saying, you know, because they were new up in the area,
8 "Maybe you guys can come over for Thanksgiving," and they were
9 like, "That would be great." They invited us over for their --
10 I had them come over to give me a hand to my house with my plow
11 to change the fluid in it, because I'd just finished having
12 back surgery in July, and we had a little cookout. They
13 invited us to their daughter's birthday party. We went to it,
14 we came back to my house, we had Chinese food, and that was the
15 last time we ever got together with them.

16 Q. Okay. So, this was in the fall of 2019?

17 A. Yes, ma'am.

18 Q. Okay. And so, the social occasions that you've described,
19 did they all take place within a relatively short time frame?

20 A. Yes.

21 Q. Okay. And you think that was around October of 2019?

22 A. Yes, ma'am.

23 Q. Okay. Now, directing your attention to October 25th of
24 2019, did you receive a phone call from Mr. Irish that day?

25 A. Yes.

1 Q. Could you tell me about that?

2 A. He called me. He was worried because he hadn't heard from
3 his wife Stephanie. He asked me to take a ride over to his
4 house to see if they were home.

5 Q. Could I stop you for just a moment? So, if I'm
6 understanding you correctly, he was not at home when he called
7 you?

8 A. No.

9 Q. Okay.

10 A. I guess he was on his way home from work, and he was up in
11 Lancaster, somewhere in that area.

12 Q. All right. And he asked you to go to his home?

13 A. Just to check to see if they were there, anyone was home.

14 Q. Okay. Did you do that?

15 A. Yes, I did, and there was no one there, so I went back
16 home.

17 Q. Okay. Did you have any further contact with him that day?

18 A. Yes. He called me later on that evening, and he was
19 completely distraught, you know.

20 Q. If I could stop you for a moment, was he home at this
21 point?

22 A. Yes, he was.

23 Q. And you mentioned he was distraught. Was this because of
24 the situation with his wife?

25 A. Yeah, his wife and kids. You know, she left with the

1 kids. I went over to see what I can do. He's outside in his
2 driveway screaming, no shirt on.

3 Q. So, he was distraught?

4 A. Yes.

5 Q. Okay. Did the subject of a firearm come up that day?

6 A. He was saying, you know, he was thinking about hurting
7 himself. I says, "You're not going to do that. You're only
8 going to hurt the kids." I said, "Do you have a firearm in the
9 house?" He said, "Yeah, a 1911." In the military that's a .45
10 caliber pistol.

11 Q. So, you're familiar with that weapon?

12 A. That was one of my issued weapons in the Army.

13 Q. Okay. Did you see the firearm that day?

14 A. No, I didn't.

15 Q. Okay. Did he ask you to take the firearm?

16 A. No.

17 Q. Did you ever see any firearms in Mr. Irish's possession?

18 A. No.

19 Q. I'd like to show you what's been previously admitted as
20 Government's Exhibits 7 and 7A.

21 MR. FALKNER: Objection.

22 THE COURT: Approach.

23 (SIDEBAR CONFERENCE AS FOLLOWS):

24 MR. FALKNER: He said he's never seen Mr. Irish with
25 weapons, and now she's going to approach him with the weapons

1 that were found in the box.

2 THE COURT: He seems like he knows a lot about
3 weapons. Are you going to ask him to identify --

4 MS. WEILAND: I believe he will be able to identify
5 it. It doesn't change his testimony. I believe he knows the
6 origin of this firearm, that he has seen it before, this
7 specific firearm --

8 THE COURT: Okay.

9 MS. WEILAND: -- and is going to offer testimony about
10 that.

11 MR. FALKNER: Well, your Honor, it's not in his 302
12 report, it's not in any discovery, so I would inquire what the
13 good-faith basis of his belief is.

14 THE COURT: I didn't hear any testimony, it was just
15 in openings, that this person died and left him a gun, and this
16 guy is close to a person who I've just heard testimony about
17 dying. So, that's the connection I'm making, so he's
18 identifying I think --

19 MS. WEILAND: I would proffer that the witness knew
20 that as Tony's gun.

21 THE COURT: That seems --

22 MR. FALKNER: Okay. We're talking about the shotgun
23 now?

24 MS. WEILAND: Yes.

25 THE COURT: All right.

1 (Pause)

2 MR. FALKNER: Sorry.

3 THE COURT: I was just going to say, for the record,
4 overruled.

5 (END OF SIDEBAR CONFERENCE)

6 BY MS. WEILAND:

7 Q. Mr. Marcotte, approaching you now with what's been
8 previously admitted as Government's Exhibits 7 and 7A -- now,
9 you mentioned that you're familiar with firearms?

10 A. Yes, ma'am.

11 Q. Do you recognize that firearm?

12 A. Yes, I do. It's an AK-style shotgun, 12-gauge shotgun,
13 and Anthony Costello had one exactly like this one that I
14 repaired for Anthony.

15 Q. You say you repaired it. You believe you repaired that
16 specific firearm?

17 A. Yes.

18 Q. How do you know it to be the same firearm?

19 A. Just the way it looks, the way the stock is.

20 Q. Talk to me about the stock.

21 A. This is a stock that's different from the one that was
22 originally with it. The original one had a wooden stock, and
23 this is a carbon fiber stock.

24 Q. Okay. And you said that you -- did you testify a moment
25 ago that you repaired that firearm for Tony?

1 A. Yes. Tony had the trigger assembly messed up and the
2 spring system inside, and I repaired it for him, because in the
3 Army I learned about AK-style firearms, which was our biggest
4 threat against us, personally, in the military.

5 Q. Okay. When you repaired the firearm for Tony, do you
6 recall the butt stock being separated from the other part of
7 the firearm like that?

8 A. No.

9 Q. Okay.

10 A. Only -- only when I repaired the spring.

11 Q. Can you explain?

12 A. There's a spring system that goes in here for the bolt
13 assembly (indicating).

14 Q. Okay.

15 A. And that can come out. Without that properly in there the
16 firearm will not work.

17 Q. Okay.

18 A. Because it --

19 Q. If I'm understanding you correctly, are you saying that
20 when you repaired the firearm you had to remove the butt stock
21 in order to access that trigger assembly?

22 A. Yes.

23 Q. Okay. And so, it was in two pieces, then, at some point,
24 when you were repairing it?

25 A. When I was repairing it, yes.

1 Q. Okay.

2 A. Because Tony said, you know, he can't get it working
3 again.

4 Q. Okay.

5 A. And I went over and looked at it.

6 Q. Now, you testified that Tony died in 2018?

7 A. Yes.

8 Q. Do you know what happened to Tony's firearm when he died?

9 A. No, I don't.

10 Q. Okay. Before he died did Tony own any vehicles?

11 A. Yes. He owned a Ford F-250, an older model F-250. It was
12 red, automatic transmission. They always called it "Big Red."
13 And Johnathon had that vehicle.

14 Q. You said, "Johnathon had that vehicle." Are you referring
15 to Mr. Irish?

16 A. Mr. Irish had that vehicle. I believe Erica Costello gave
17 it to him because the motor was blown.

18 Q. So, was this after Tony died?

19 A. Yes, ma'am.

20 Q. So, after Tony died Erica, Tony's wife, gave Mr. Irish
21 Tony's pickup truck?

22 A. Yes.

23 Q. Big Red?

24 A. Yes.

25 Q. And you saw Mr. Irish with that truck after Tony died?

1 A. Yes, ma'am, after I guess he replaced the engine, did the
2 work on it, and every now and then I'd see him around, just
3 around, because it's a small area, Bethlehem and Littleton. I
4 saw him in Irving Gas Station. I said, "How's the truck
5 running?" Things like that.

6 Q. Okay. Mr. Marcotte, do you know an individual named
7 Roscoe Whitney?

8 A. No.

9 Q. Do you know Neil Prive?

10 A. No.

11 Q. Gary Roya?

12 A. No.

13 Q. Dylan Roosa?

14 A. I met him today.

15 Q. How about Elizabeth Millett?

16 A. No.

17 Q. Peter Duguay?

18 A. No.

19 MS. WEILAND: May I have a moment, your Honor?

20 THE COURT: Yes.

21 MS. WEILAND: Permission to approach, your Honor, to
22 retrieve the firearm?

23 THE COURT: Yes.

24 MS. WEILAND: I have no further questions.

25 THE COURT: Go ahead, Attorney Falkner.

1 CROSS-EXAMINATION2 BY MR. FALKNER:3 Q. Mr. Marcotte, I think you testified on direct you're very
4 familiar with the 1911 pistol as well?5 A. It's a .45 caliber that was produced in 1911 by Colt
6 Firearms.7 Q. Are you familiar with the procedure to safely clear it at
8 a clearing berm?

9 A. Yes, I do.

10 Q. Could you demonstrate that for the jury, if I approached
11 you with one?

12 A. Pardon?

13 Q. If I approached you with a 1911 firearm, could you
14 demonstrate that?

15 A. Yes, I could.

16 MS. WEILAND: May we approach, your Honor?

17 THE COURT: Yes.

18 (SIDEBAR CONFERENCE AS FOLLOWS):

19 MS. WEILAND: I just question the relevance of this.

20 THE COURT: I do, too. What is the reason for it?

21 MR. FALKNER: When Peter Duguay was testifying, he
22 testified that, by implication at the very least, that what
23 Mr. Irish had done in his car was basically what would be the
24 procedure for safely clearing a 1911 firearm during --
25 basically at a clearing berm, but that he had done it in his

1 truck. Then AUSA Krasinski made a demonstration for the jury
2 and asked whether that was what had happened.

3 THE COURT: Whether that was the sound he heard.

4 MR. FALKNER: Whether that was the sound, and he
5 testified that it was not, and that it was a much slower
6 process, and I would like for the jury to hear the correct
7 sound. And this is somebody who can demonstrate to the jury
8 what that sound would actually be.

9 MS. KRASINSKI: Wouldn't the proper way to have done
10 that been through the witness who testified about that, through
11 Mr. Duguay?

12 MR. FALKNER: This witness is familiar with that
13 process, can demonstrate it.

14 THE COURT: And you're suggesting to me that the sound
15 is going to be different?

16 MR. FALKNER: That's essentially what Peter Duguay
17 said.

18 THE COURT: He said it was slower, I think is what --
19 he recognized it when she did it and he said, "Yes, I recognize
20 it," but he said he did it more slowly, and he was testifying
21 that that was a safer way to clean the gun out, clear the gun.
22 So, are you suggesting somehow that the sound is going to be
23 different?

24 MR. FALKNER: There's a couple of pieces of relevance.
25 One, the sound may well be different. It may well, one, not be

1 nearly as loud, and, two, it also -- an issue is he says that
2 he wasn't able to see it happen, that it was done without his
3 knowledge. The jury will be able to witness the actual motions
4 that are involved and assess the believability of whether one
5 could actually do that without somebody else in the car
6 noticing other than by the sound. So, I think there's a lot
7 of -- I think it's --

8 THE COURT: Is there any risk at all with this gun?
9 There's no risk, right? I mean, it's completely --

10 MS. KRASINSKI: I mean, I think there's always risk
11 with putting a firearm in someone's hands that you don't -- but
12 the firearm is currently rendered safe.

13 THE COURT: I'm just confirming what you told me.

14 MS. KRASINSKI: It is rendered safe. The firearm is
15 rendered safe.

16 THE COURT: So, you're essentially going to ask him to
17 demonstrate how that would be done?

18 MR. FALKNER: Correct.

19 THE COURT: It's so minimally relevant, but go ahead.

20 MR. FALKNER: Thank you, your Honor.

21 THE COURT: I'm going to allow it.

22 (END OF SIDEBAR CONFERENCE)

23 THE COURT: Go ahead, Attorney Falkner.

24 Q. Sir, I'm approaching you with Government's Exhibit 5, and
25 it has been made safe. Do you recognize what kind of weapon

1 | that is?

2 A. Yes. It's a .45 caliber 1911.

3 Q. Can you demonstrate for the jury the procedure for safely
4 clearing the weapon?

5 A. There's no magazine in it. You would drop the magazine
6 with the magazine release, pull back the slide, eject any ammo
7 that's in it, and leave it like in this position (indicating),
8 a safe position.

9 Q. Can you demonstrate how you would pull back the slide?

10 A. (Indicating). You've got a latch right here (indicating)
11 which will hold the slide completely back. And it's two-piece
12 safety. Right here is a safety (indicating) before you pull
13 the trigger. You cannot pull the trigger without touching this
14 safety and the safety itself (indicating). There's two
15 safeties on this.

16 MR. FALKNER: May I have a moment, your Honor?

17 THE COURT: Yes.

18 MR. FALKNER: I have nothing further, your Honor.

19 MS. WEILAND: Nothing, your Honor.

20 THE COURT: All right. Mr. Marcotte, you may be
21 excused, sir. Thank you.

22 THE WITNESS: Okay. I'm going to put this right back
23 up here for him.

24 | (Witness stepped down)

25 MR. FALKNER: Your Honor, may I approach to put the

1 | firearm back on the table?

2 THE COURT: Yes. We're going to probably take a break
3 at 2:00, unless the jury needs one now. I was thinking we
4 would go till 2:00. Is that good? All right.

5 So, government, go ahead and call your next witness.

6 MS. WEILAND: The United States calls Dylan Roosa.

7 **DYLAN ROOSA**, having been duly sworn by the Clerk, was
8 examined and testified as follows:

9 THE CLERK: Thank you. Please state your full name
10 and spell your last name for the record.

11 THE WITNESS: Dylan Roosa, R-o-o-s-a.

12 THE CLERK: Thank you very much. Please be seated.

DIRECT EXAMINATION

14 BY MS. WEILAND:

15 Q. Good afternoon, Mr. Roosa.

16 A. Good afternoon.

17 Q. How old are you?

18 A. Twenty-eight.

19 Q. Are you employed?

20 A. Yup.

21 Q. What type of work do you do?

22 A. Mechanic.

23 Q. Do you work full time?

24 A. Yup.

25 Q. What town do you work in?

1 A. Littleton.

2 Q. And what town do you live in?

3 A. North Stratford.

4 Q. Do you know Johnathon Irish?

5 A. Yup.

6 Q. How do you know him?

7 A. I met him through my wife a long time ago.

8 Q. When you say "a long time ago," do you remember when?

9 A. Five, six years.

10 Q. And did you have regular contact with him from all the way
11 back when you first met him?

12 A. Mm-hmm.

13 Q. Did you work together at one time?

14 A. Yup.

15 Q. When was that?

16 A. 2016 to '17, '18. Pat's Towing in Seabrook, New
17 Hampshire.

18 Q. Okay. If you wouldn't mind just maybe scooting a little
19 bit closer to the microphone so the court reporter can hear
20 you.

21 Were you friendly with Mr. Irish outside of work?

22 A. Yup.

23 Q. Would you all socialize?

24 A. Yes.

25 Q. Do you know his wife Stephanie?

1 A. Yup.

2 Q. Did there come a point where you fell out of contact with
3 Mr. Irish for a while?

4 A. Yup.

5 Q. Do you remember when that was?

6 A. Shortly after working together for quite a while, yeah.

7 Q. If I'm understanding you correctly, you worked together,
8 you said, at a towing company?

9 A. Yeah.

10 Q. Did you leave that towing company, or did Mr. Irish leave
11 that towing company?

12 A. Right around the same time we both left the company. He
13 went to another one, and so did I.

14 Q. And at that point you sort of lost contact for a while?

15 A. Yup.

16 Q. Did there come a point where you reestablished contact?

17 A. Yup.

18 Q. And do you remember when that was?

19 A. Last winter.

20 Q. Okay. Tell me about when you first saw him last winter.

21 A. I was at Walmart cashing a paycheck, and him and his wife
22 and kids were in line. I hadn't seen him in a while. Walked
23 over, you know, bumped in passing.

24 Q. And after bumping into him at Walmart that day, did you
25 see him again after that?

1 A. Yeah. It was within a few days.

2 Q. And tell me about that.

3 A. Him and his wife and kids were moving into a new house
4 there in town.

5 Q. Okay. And how did it come about that you saw him?

6 A. He came out and asked me to help him move a washer and
7 dryer, some of the bigger stuff around.

8 Q. Okay. He asked you for some help moving?

9 A. Yeah.

10 Q. Okay. And this was into a home -- he was moving into a
11 home in Littleton?

12 A. Yup.

13 Q. Okay. Do you remember when this was? You said it was
14 wintertime?

15 A. Yeah. I couldn't say exactly. I mean, I know it was like
16 30 below outside. It was cold.

17 Q. So, are we talking about --

18 A. It was late wintertime, anyway.

19 Q. 2019?

20 A. Yes.

21 Q. Okay. So, did you agree to help him move?

22 A. Yeah.

23 Q. All right. And when did you go to his house?

24 A. It was, like, the next day after work, I stopped by and
25 helped him move some of the bigger stuff around.

1 Q. Okay. You said you helped him move some of the bigger
2 things. Do you remember specifically any items that you helped
3 him move?

4 A. There was a washer and dryer that we threw outside in the
5 dumpster and something else we brought in the house, a big
6 table. I forget what it was.

7 Q. Okay. Directing your attention to an item here that's
8 marked as Government's Exhibit 33, do you recognize that box?

9 A. Yup.

10 Q. Have you seen it before?

11 A. Yup.

12 Q. When did you first see it?

13 A. Shortly after Johnathon had moved in the house. It was
14 out in the living room.

15 Q. Okay. You saw that in the living room?

16 A. (Witness nodded).

17 Q. When you saw it in the living room was it opened or
18 closed?

19 A. Closed.

20 Q. And did it have that lock on it?

21 A. Nope.

22 Q. Okay. Did there come a point when it was opened?

23 A. Yup.

24 Q. Was it that same day?

25 A. No.

1 Q. Tell me about when you saw it -- well, you said you saw it
2 in the living room. You just saw it and took note of it?

3 A. Yeah. It was just out.

4 Q. Did he ever ask you for any help moving it?

5 A. Yeah. We had moved it from the living room to the
6 bedroom.

7 Q. When you say "the bedroom," are you talking about
8 Mr. Irish's bedroom?

9 A. Yup.

10 Q. And, again, was it closed or opened at that time?

11 A. It was closed when we moved it, but it had been opened
12 that day, yeah.

13 Q. So, you said it had been opened that day. Was it opened
14 before you moved it, or was it opened after you moved it?

15 A. We brought it in the bedroom, and he opened it and was
16 talking about the guns and put it away.

17 Q. I'm sorry. You moved the case into his bedroom. I
18 apologize if I already asked you this. Did it have that lock
19 on it when you moved it?

20 A. No, it didn't.

21 Q. Okay. So, how did it come about that he opened the case?

22 A. Just talking about it.

23 Q. He opened the case, and what was inside?

24 A. Guns.

25 Q. How many guns did you see?

1 A. Three.

2 Q. Do you remember what kind of guns they were?

3 A. The 1911, an AR, and a Catamount Fury 12-gauge.

4 Q. Are you familiar with firearms?

5 A. A little bit.

6 Q. Okay. Directing your attention -- you mentioned a 1911.

7 What type of gun is that?

8 A. .45 caliber handgun.

9 Q. Okay. And what did it look like?

10 A. Black.

11 Q. Okay. And then you mentioned that there was an AR. Do
12 you remember anything about the way that firearm looked?

13 A. Yeah. That was a full-dressed, two sets of sights, grip,
14 flashlight, laser.

15 Q. You say "full-dressed." What does that mean?

16 A. All the extra gadgets one could put on a gun, I guess.

17 Q. Okay. And the third firearm you said was?

18 A. A 12-gauge shotgun. It's a semiautomatic 12-gauge.

19 Q. Showing you what's been previously admitted as
20 Government's Exhibit 5, do you recognize this?

21 A. Yup.

22 Q. Is this one of the firearms you saw in the box that day?

23 A. Yup.

24 Q. Okay. And holding up Government's Exhibit 6, do you
25 recognize this?

1 A. Yup.

2 Q. Is this one of the firearms you saw that day?

3 A. Yup.

4 MS. WEILAND: Now, permission to approach, your Honor?

5 THE COURT: Yes.

6 Q. In your description of this gun you mentioned it was fully
7 dressed. I believe you mentioned there were two sets of sights
8 on that firearm. Is that common?

9 A. I mean, I suppose it could be, if that's what you were
10 looking for, but not necessarily.

11 Q. Did you ever have any conversations with Mr. Irish about
12 the two sets of sights on that firearm?

13 A. Yeah.

14 Q. Do you know why there were two sets of sights on the
15 firearm?

16 A. Different ranges.

17 Q. What does that mean?

18 A. Like shooting at different ranges, like 50 yards away, 100
19 yards away.

20 Q. Okay. And you mentioned that there's also, I believe, a
21 light of some sort on that?

22 A. Yeah. It's part of the grip on the -- under the barrel
23 there. It's a laser sight and a flashlight.

24 Q. Okay. All of those items were on the firearm when you saw
25 them that day?

1 A. Mm-hmm.

2 Q. Holding up for you now what's marked and admitted as
3 Government's Exhibits 7 and 7A, do you recognize these?

4 A. Mm-hmm.

5 Q. What is this?

6 A. That's the semiautomatic 12-gauge shotgun.

7 Q. Okay.

8 A. It's a Catamount Fury.

9 Q. This is the same firearm you saw in this case?

10 A. Yup.

11 Q. Now, on that day you said you opened the case, you saw
12 three firearms. Did he remove the firearms from the case?

13 A. Picking up and showing them but not like -- yeah.

14 Q. So, he did handle each of them that day and show them to
15 you?

16 A. Yeah.

17 Q. Okay. Do you remember having any other conversations
18 about any of those firearms?

19 A. No. I mean, it was pretty usual for them to be around,
20 so, no, not really.

21 Q. I'm sorry. You said what?

22 A. I said it was usual for them to be around, so --

23 Q. What do you mean by that?

24 A. He was proud of them. They were always, you know --

25 Q. When you say, "He was proud of them," did he talk about

1 them?

2 A. Yeah, show them off, talk about them.

3 Q. Okay. Did you ever -- aside from this day -- so, I just
4 want to back up a little bit. This specific incident we're
5 talking about, where you helped Mr. Irish move that black case
6 into the bedroom, you said you put it into his closet?

7 A. Yup.

8 Q. What else did you -- did you remember anything you saw in
9 the closet besides that case?

10 A. Clothes.

11 Q. Men's clothing?

12 A. Yes. It was a combination of him and his wife's clothes,
13 I suppose.

14 Q. Okay. And was Stephanie there that day?

15 A. Yeah.

16 Q. Was she there when you were going through the case and
17 looking at the firearms?

18 A. Not directly in the room, no.

19 Q. Okay. Now, the Catamount Fury shotgun that I just held
20 up, it's in two pieces. Is that how you remember seeing it
21 when he removed it from the case?

22 A. Yeah.

23 Q. Did you ever have any conversations about why it was in
24 two pieces?

25 A. The bolt for the stock had broken and went missing.

1 Q. Did you ever see that firearm together in one piece?

2 A. No.

3 Q. And, again, this all happened within, I believe you said,
4 a week or so of when you bumped into him at Walmart and he
5 asked you for help moving?

6 A. Yeah. Give or take, yeah.

7 Q. Okay. So, before that day you hadn't seen him for a
8 while, correct?

9 A. Yeah. It had been quite some time.

10 Q. Okay. After that day did you guys begin hanging out more
11 frequently?

12 A. Yup.

13 Q. How frequently would you say you started hanging out?

14 A. A couple of times a week.

15 Q. Okay. And what types of things would you do together?
16 Would you just hang out at one another's home, or would you go
17 out and do things?

18 A. Yeah, just hang around the house, because him and his wife
19 would babysit our kids from time to time, and the kids would
20 hang out together.

21 Q. Okay. During any of those activities did you ever see any
22 of those firearms again while hanging out at Mr. Irish's house?

23 A. Yeah.

24 Q. Any specific incidents that stick in your mind?

25 A. Shooting out behind his house one day.

1 Q. Tell me about that.

2 A. Uh, we shot the 1911 out in the backyard.

3 Q. Do you remember when that was?

4 A. Summertime. I don't exactly remember like the day, no.

5 Q. Sometime in the summer of 2019?

6 A. Yeah.

7 Q. Was anybody else there?

8 A. It was just me and him in the yard. The kids and my wife
9 and his wife were in the house.

10 Q. Okay. And you said you were shooting it. Was this sort
11 of like target practice?

12 A. Yeah.

13 Q. What were you shooting at?

14 A. A tree.

15 Q. Okay.

16 A. Nothing --

17 Q. Not cans or something like that?

18 A. No.

19 Q. Did you ever see Mr. Irish carrying the 1911?

20 A. Around the house and the property, yeah.

21 Q. When you say, "Around the property," what do you mean?

22 A. Out in like -- we had gone out and built like a deer stand
23 and what not out in the woods. He would carry it out, and it
24 wasn't unusual for him to have it on him.

25 Q. And when you say he had it on him, where did he carry it

1 on his person?

2 A. On a holster on his belt line.

3 Q. Showing you now what's been admitted as Government's
4 Exhibit 18, did the holster look like this?

5 A. Mm-hmm.

6 Q. Did there ever come a time where Mr. Irish asked you to
7 hold his firearms?

8 A. Mm-hmm.

9 Q. Do you remember when that was?

10 A. Me and my wife had babysat his kids. Him and his wife had
11 gone to court for something to do with the house, and her
12 mother had gotten a restraining order against him.

13 Q. Okay. So, do you remember approximately when that was?

14 A. Again, it was probably late in the summertime.

15 Q. Okay.

16 A. Approaching fall time. I don't know exactly when, though.

17 Q. You remember that -- you said you were babysitting his
18 children?

19 A. Yeah.

20 Q. Were you at his house?

21 A. Yup.

22 Q. Okay. And they were actually in court on the day that you
23 were there babysitting?

24 A. Yes.

25 Q. Was that the day that they were in court related to, you

1 mentioned that his mother-in-law had taken out a restraining
2 order. Was that the reason they were in court, was something
3 to do with the restraining order?

4 A. I'm not sure if it was for the restraining order or not.
5 I want to believe -- I believe it had something to do with the
6 house.

7 Q. Okay. And was it that same day that Mr. Irish asked you
8 to hold onto the firearms?

9 A. Mm-hmm.

10 Q. How did that come about?

11 A. He had just asked me with the restraining order -- when he
12 come home and told me about the restraining order, he asked me
13 if I would take the guns home.

14 Q. So, this was then, your testimony is now that --

15 A. That day.

16 Q. Okay. That whatever happened in court did have something
17 to do with the restraining order, is your understanding?

18 A. I believe he was issued -- the restraining order was
19 issued that day while they were in court.

20 Q. I see. And so, in light of that, he said to you he wasn't
21 sure he should have the firearms?

22 A. Yeah.

23 Q. And he asked you to hold them?

24 A. Yup.

25 Q. What did you say?

1 A. No.

2 Q. Why did you say, "No"?

3 A. I was a Mass. resident at the time, and I just didn't want
4 them.

5 Q. You said you were a Mass. resident at the time. Were you
6 living in Massachusetts, or were you living in New Hampshire?

7 A. No. We had just moved up into New Hampshire earlier that
8 year, and I just hadn't transferred, like, full residency and
9 all that, so --

10 Q. So, like your driver's license, for instance, was a
11 Massachusetts license?

12 A. Yeah. It was a Massachusetts driver's license, yeah.

13 Q. And so, if I'm understanding you correctly, is it your
14 testimony you weren't sure if you were allowed to have firearms
15 or --

16 A. Yup.

17 Q. Okay. And that was because of your residency you weren't
18 sure, as a Massachusetts resident?

19 A. Yeah, yeah.

20 Q. Okay. So, you declined to take the guns. Do you know
21 what happened to the guns?

22 A. No.

23 Q. Did he say anything more about them?

24 A. No.

25 Q. After that day did you see the defendant carrying

1 firearms?

2 A. No.

3 Q. Did you see him carrying firearms ever again or just for a
4 period of time?

5 A. No.

6 Q. Did you ever see Stephanie carrying a firearm?

7 A. No.

8 Q. At some point you had a falling out with Mr. Irish; is
9 that right?

10 A. Yeah.

11 Q. When did that happen?

12 A. More recently, within the past couple of -- a month and a
13 half, two months.

14 Q. Okay. So, somewhat recently?

15 A. Yeah.

16 Q. What was the general nature of the disagreement?

17 A. It started with some money, and he just became kind of
18 irate and was calling and yelling at my wife and screaming and
19 hollering.

20 Q. You said it started over some money. Can you be a little
21 more specific?

22 A. Yeah. We had borrowed, like, I don't remember exactly, I
23 think it is like 20 or \$30 or something, and I had been out of
24 work sick for most of that week and didn't pay him, and he got
25 all pissed about it and was calling my wife yelling and

1 screaming, and we had a big argument, and that was pretty much
2 the end of the --

3 Q. Okay. And after this back and forth over the money and
4 the argument on the phone did you have any more contact with
5 Mr. Irish?

6 A. No.

7 Q. Okay. Do you recall at some point the FBI reaching out to
8 you to ask you some questions about Mr. Irish?

9 A. Yup.

10 Q. Did you agree to speak with them?

11 A. Yeah.

12 Q. Do you remember roughly when that was?

13 A. I mean, they had come by my work a few times. I don't
14 remember like exactly, no.

15 Q. Do you remember if it was before or after your falling out
16 with Mr. Irish?

17 A. After.

18 Q. Okay. And do you remember your first interview with them?

19 A. Yeah.

20 Q. Do you remember whether you told them about any of the
21 same instances you've testified about today?

22 MR. FALKNER: Objection. Hearsay.

23 THE COURT: Overruled.

24 A. He had asked me some stuff, but, I mean, not in a great
25 detail the first time I had met him, no.

1 Q. Okay. Did you talk about -- do you remember whether or
2 not the subject of shooting the gun in Johnathon's yard came up
3 during that first interview?

4 A. Yeah.

5 Q. Okay. And what about Johnathon asking you to hold onto
6 his firearms? Do you remember whether that came up in your
7 first interview?

8 A. Yup.

9 Q. Now, you said you weren't quite sure when that first
10 interview took place. Would seeing the agent's summary of that
11 interview refresh your recollection about when the interview
12 took place?

13 A. Possibly, yeah.

14 MS. WEILAND: Permission to approach, your Honor?

15 THE COURT: Yes.

16 Q. If you would take a moment to just review that and
17 directing your attention specifically to the highlighted
18 portion at the bottom. After you have had a chance to review
19 it, if you wouldn't mind handing it back to me.

20 A. (Witness reviewed document).

21 Q. Having reviewed that report, does that refresh your
22 recollection about when that first interview took place?

23 A. I mean, a little bit, yeah.

24 Q. Okay.

25 A. It was before Christmastime, late fall.

1 Q. Late fall. During that initial interview did the FBI
2 enlist you to work for the FBI as a confidential human source?

3 A. Mm-hmm.

4 Q. Was it during that same interview?

5 A. No.

6 Q. Did it happen at a later time?

7 A. Yes.

8 Q. Do you remember how much later?

9 A. It was a few weeks.

10 Q. Okay. Was that something that they approached you about,
11 or was it your idea that you approach the FBI about working as
12 a confidential source?

13 A. They approached me.

14 Q. Okay. Now, at this point -- I just want to make sure I
15 understand the timeline -- this was after your falling out with
16 Mr. Irish?

17 A. Yup.

18 Q. And so, you weren't in regular contact with him at this
19 point?

20 A. No.

21 Q. Okay. Did you agree to work as a confidential source for
22 the FBI?

23 A. Yup.

24 Q. What did you understand that to mean?

25 A. How do you mean?

1 Q. What was your understanding about what that would entail?

2 A. I mean, they just -- they came by, asked me what I know,
3 and at one point they had wanted me to reach out to them, but
4 it never happened.

5 Q. Okay. When you agreed to work as a confidential source,
6 did the agents go over with you any type of ground rules that
7 would apply to your working in that capacity?

8 A. A little bit, yeah.

9 Q. Do you remember what any of those were?

10 A. Like, not to, like, pose as any kind of FBI agent or do
11 anything, like, unsanctioned, I guess, that was unapproved of
12 or without their say-so.

13 Q. Okay. And what about in terms of any information you
14 provided to the FBI? Were you given any instructions about
15 that?

16 A. No.

17 Q. Did you receive anything of value in exchange for your
18 assistance?

19 A. At one point they had given me \$250.

20 Q. Okay. Do you remember when that was?

21 A. Right around Christmastime or --

22 Q. Okay.

23 A. -- shortly after.

24 Q. So, would this have been after the initial agreement to
25 work as a confidential source?

1 A. Yeah.

2 Q. Did you ask them for money?

3 A. No.

4 Q. Was your agreement to work as a source contingent on
5 receiving any type of payment from the FBI?

6 A. No.

7 Q. Other than that one-time payment of \$250, did you receive
8 anything else of value from the FBI?

9 A. Nope.

10 Q. Are you receiving or do you expect to receive anything of
11 value in exchange for your testimony here today?

12 A. No.

13 Q. Do you know a person named Roscoe Whitney?

14 A. I know of.

15 Q. When you say you "know of," does that mean you recognize
16 the name?

17 A. Yeah.

18 Q. What about Gerald Roya?

19 A. No.

20 Q. David Marcotte?

21 A. No.

22 Q. Elizabeth Millett?

23 A. I'm familiar, but not personally, no. Know of.

24 Q. "Know of." Do you know who she is in relation to
25 Mr. Irish?

1 A. I believe it's Stephanie's mom.

2 Q. What about Neil Prive?

3 A. No.

4 Q. Peter Duguay?

5 A. I know of.

6 Q. Okay. Now, what is your understanding about the current
7 relationship between Mr. Irish and Stephanie?

8 A. They're getting a divorce.

9 Q. Okay. Have you remained in contact with Stephanie since
10 she and Mr. Irish split up?

11 A. Yup.

12 Q. Would you say that you're friends?

13 A. Yeah.

14 MS. WEILAND: May I have a moment, your Honor?

15 (Pause)

16 Q. Going back a moment ago, Mr. Roosa, I asked you about
17 Government's Exhibit 18, a holster. Do you recognize this
18 holster?

19 A. Yes.

20 Q. Yes. Okay. Thank you?

21 MS. WEILAND: I have no further questions, your Honor.

22 THE COURT: All right. We're going to take a 10,
23 15-minute break before Mr. Falkner asks you some questions,
24 sir. So, we'll take a break. We'll reconvene at about 2:15,
25 2:20. All right?

1 THE CLERK: All rise for the jury.

2 (The jury exited the courtroom at 2:08 p.m.)

3 JURY NOT PRESENT

4 THE COURT: Mr. Roosa, you may step down during the
5 break.

6 I just want to make sure that the government is able
7 to get the documents ready so that we can turn those over to
8 the attorney when he arrives, and that way he can get prepared
9 while we're still in trial. At some point he'll probably need
10 to speak with counsel. And who else is on the list? What's
11 next?

12 MS. KRASINSKI: There are three witnesses remaining:
13 Mr. Roya, Special Agent Forte and Special Agent Tongbua.

14 THE COURT: So, Roya is -- we'll move him to the last.
15 He would be next.

16 MS. KRASINSKI: He would be next, but if we need to
17 adjust the order, we will, your Honor.

18 THE COURT: Okay. And tell me the two agents again.

19 MS. KRASINSKI: Special Agent Forte and Special Agent
20 Tongbua. It's T-o-n-g-b-u-a.

21 THE COURT: All right. And do you think those two
22 will take the remainder of today, so we could move Roya into
23 tomorrow, possibly?

24 MS. KRASINSKI: I anticipate that there may be a
25 lengthy cross of Agent Forte, your Honor.

1 THE COURT: Okay. All right. That being the case, it
2 may be easiest to give counsel the time to meet with Mr. Roya,
3 and somebody can, obviously, speak to him so he is aware, and
4 I'll let you handle that, and we'll all take an afternoon break
5 now. All right.

6 THE CLERK: All rise.

7 (Recess taken from 2:10 p.m. to 2:30 p.m.)

8 THE CLERK: All rise for the Honorable Court. Please
9 remain standing for the jury.

10 (The jury entered the courtroom at 2:30 p.m.)

11 THE CLERK: Please be seated.

12 THE COURT: Attorney Falkner, go ahead.

CROSS-EXAMINATION

14 BY MR. FALKNER:

15 Q. Good afternoon, Mr. Roosa.

16 A. Good afternoon.

17 Q. The first time that you met with the FBI on this case was
18 November 14th of 2019, right?

19 A. I don't recall the specific date, but that's around the
20 right time frame, yeah.

21 Q. And on that occasion you met with Agent LeBlanc, right?

22 A. Yes.

23 Q. And was he the only agent that you met with on that day?

24 A. Yeah.

25 Q. At any point during your conversation with Agent LeBlanc

1 did the idea of becoming a confidential human source come up?

2 A. No.

3 Q. How long did you meet with Mr. LeBlanc?

4 A. Off and on over a course of, like, a month and a half or
5 so, give or take.

6 Q. Let me ask it another way. During your first meeting with
7 him where did that meeting take place?

8 A. My work.

9 Q. And I think you said he had been coming around to your
10 workplace before then.

11 A. No.

12 Q. How did it come to be that he was at your workplace? Did
13 he just show up? Did you have phone conversations with him
14 beforehand?

15 A. He just showed up.

16 Q. You had no idea he was coming, right?

17 A. No.

18 Q. And did he identify himself as an FBI agent?

19 A. Yeah.

20 Q. Did he tell you what he was there to talk to you about?

21 A. Yeah.

22 Q. Were you surprised that an FBI agent had come to your
23 workplace to talk to you?

24 A. A little bit at first, yeah.

25 Q. Where did you talk? Was it out on the floor?

1 A. No. In the back storage room where we keep all our tires.

2 Q. And you work at VIP Tires and Services, right?

3 A. Yup.

4 Q. So, he took you back to some kind of private room?

5 A. Yeah.

6 Q. Did you have any conversation before you went back to the
7 private room?

8 A. Nope.

9 Q. He just said, "I'm here as an FBI agent; I'd like to come
10 talk to you"?

11 A. Yeah.

12 Q. And then the two of you walked out back?

13 A. Yeah.

14 Q. Did you have any conversation as you were walking to the
15 back?

16 A. No.

17 Q. And you met for 10 or 15 minutes, you said?

18 A. Roughly.

19 Q. And were you surprised that you were being asked questions
20 about Johnathon Irish?

21 A. I was surprised to see them, but, no, not really.

22 Q. Had you expected then to be asked questions about
23 Johnathon Irish and his firearms?

24 A. After he introduced himself and told me why he was there,
25 yeah.

1 Q. Let me put it to you another way. During your
2 testimony -- according to your testimony on direct examination
3 you saw firearms at Johnathon's house a lot, right?

4 A. Yeah.

5 Q. You went out -- you went through the box in the wintertime
6 of 2019, right?

7 A. I went where?

8 Q. You went through the box with Johnathon. He showed you
9 the different firearms in the box, right?

10 A. Yeah.

11 Q. And that was in the winter of 2019?

12 A. Yeah.

13 Q. And you still brought your kids around? You didn't think
14 there was anything wrong with that, right?

15 A. No.

16 Q. And you went over to his house repeatedly, right?

17 A. Yeah.

18 Q. You didn't find anything wrong with the fact that there
19 were firearms in that house, right?

20 A. No.

21 Q. And at one point you were out shooting in the backyard?

22 A. Yeah.

23 Q. You didn't find anything wrong with possessing the firearm
24 yourself, right?

25 A. No.

1 Q. And you didn't find anything wrong with Johnathon
2 possessing the firearm, right?

3 A. No.

4 Q. And your family was around and everything else, right?

5 A. (Witness nodded).

6 Q. So, when the FBI was suddenly asking you questions about
7 Johnathon Irish and his possession of firearms, was that
8 surprising to you?

9 A. A little bit, yeah.

10 Q. Because you didn't think there was anything wrong with
11 Johnathon Irish having firearms, right?

12 A. (Witness nodded).

13 Q. And he had been a good friend to you, right?

14 A. More or less.

15 Q. Now, it was at that meeting in November of 2019 that you
16 told the FBI that you and Johnathon had stopped talking one to
17 two months prior to that, right?

18 A. Yeah.

19 Q. So, sometime between the middle of September and the
20 middle of October is when you and Johnathon stopped talking,
21 correct?

22 A. Yeah.

23 Q. So, it wasn't, as you said on your direct, one or two
24 months prior to today; it was one or two months prior to
25 November, right?

1 A. Yeah.

2 Q. And you and your wife were both friendly with Johnathon
3 and Johnathon's wife, right?

4 A. Yeah.

5 Q. And the kids played together, right?

6 A. Yeah.

7 Q. And you watched his kids, he watched your kids, right?

8 A. Yeah.

9 Q. And you told the FBI that the falling out that you had had
10 with Johnathon Irish was over allegations that Stephanie Irish
11 had been cheating on Johnathon, correct?

12 A. That and money, yeah.

13 Q. And you told the FBI that Johnathon had believed that your
14 wife had made those accusations to Stephanie, right?

15 A. Yeah.

16 Q. That was what you said the fight with Johnathon Irish was
17 all about, right?

18 A. That's how it started, yeah.

19 Q. You didn't say anything in that first interview with Agent
20 LeBlanc about Johnathon lending you money, did you?

21 A. I don't recall.

22 Q. Do you deny saying that, or do you not remember whether
23 you said it?

24 A. I do not remember.

25 Q. At some point during that interview, though, you had a

1 conversation about the fact that your finances were low, didn't
2 you?

3 A. No.

4 Q. Did you ever talk to the FBI about your finances?

5 A. A little bit, yeah.

6 Q. Oh, you did? Was it during the first interview?

7 A. No.

8 Q. When did you talk to them about your finances?

9 A. I don't recall the specific date. I mean, I had talked to
10 them off and on for weeks at a time, so --

11 Q. All right. Well --

12 A. It was fairly early on.

13 Q. What did you say about your finances?

14 A. Not much. Just I was hard up, like, times are tough all
15 around.

16 Q. So, in the late fall of 2019 is it fair to say that you
17 were complaining to the FBI that you didn't have much money?

18 A. No.

19 Q. Then, you tell me what you exactly said to them.

20 A. Like I said, I don't really recall the word-for-word
21 conversation, but --

22 Q. But you told them that you were hard up, times were tough?

23 A. Yes, yes.

24 Q. Why would you tell an FBI agent who is investigating
25 Johnathon Irish's firearms that you were hard up for cash?

1 A. It was a conversation that revolved around me driving to
2 meet them at places and what not and I couldn't afford to be
3 driving around.

4 Q. So, you were asked to go meet Johnathon at one point; is
5 that right?

6 A. Yeah.

7 Q. And you told the FBI you couldn't afford to go drive to
8 meet him? That's how that came up?

9 A. No. They had asked me if I could come meet them on my day
10 off somewhere, and I just told them I couldn't afford on my day
11 off to be driving 60 miles out of my way to have a
12 conversation.

13 Q. Where did they want to meet you?

14 A. In Littleton.

15 Q. Where were you living at the time?

16 A. North Stratford.

17 Q. And so, the round trip is how long?

18 A. About 60-something miles.

19 Q. Where is North Stratford in relation to Littleton?

20 A. About an hour north.

21 Q. Okay. How many times -- was it only -- I should say
22 agent. Was it only Agent LeBlanc, or did you meet with anybody
23 else from the FBI?

24 A. I met with his partner who had come with him a couple of
25 times.

1 Q. Was that Agent Tongbua?

2 A. Yes.

3 Q. Is he in the courtroom here?

4 A. Yeah.

5 Q. Where is he?

6 A. Over there in the corner (indicating) and -- yeah.

7 Q. Okay. He's not over there (indicating)?

8 A. No.

9 Q. Okay. And how many times did you meet with Agent Tongbua?

10 A. He had come with Kevin a couple of times. I don't know.

11 Q. They signed you up as a confidential informant on November
12 25th of 2019, correct?

13 A. Yeah.

14 Q. Where were you when they signed you up?

15 A. Work.

16 Q. They met with you at the VIP Tires?

17 A. Yeah.

18 Q. Who made the arrangements for them to meet you? Who
19 arranged the meeting?

20 A. Kevin.

21 Q. This time you knew they were coming, right?

22 A. Yeah.

23 Q. Now, the first meeting you had with them on November 14th,
24 were there any meetings between the November 14th meeting and
25 the November 25th meeting, when you were signed up as a

1 confidential informant?

2 A. I don't recall specific dates, so I'm not sure if there
3 was or wasn't in between. I have no idea.

4 Q. You also expressed to those agents concern for the welfare
5 of Johnathon's children; is that right?

6 A. A little bit.

7 Q. After you and Johnathon Irish had broken off your
8 relationship, you continued to be friendly with Stephanie
9 Irish, correct?

10 A. Not at first, no. I kind of cut ties with all of them.

11 Q. Well, at some point you reestablished ties with Stephanie
12 Irish, correct?

13 A. Mm-hmm.

14 Q. When was that?

15 A. Again, I don't recall a specific date, but it revolved
16 around the Child Services coming to the house and them filing
17 for divorce, and she had reached out to us.

18 Q. "She had reached out to us." You mean she had reached
19 out --

20 A. To me and my wife.

21 Q. You and your wife?

22 A. Yup.

23 Q. Did she move in with you?

24 A. No.

25 Q. Did she ask for care of the children?

1 A. No.

2 Q. Did you ever tell her you were going to help take care of
3 the kids after Johnathon was arrested?

4 A. It had nothing to do with his arrest, but me and my wife
5 had told her that we would do anything we could to help her.
6 Yeah.

7 Q. Fair to say in the weeks leading up to Johnathon's arrest
8 Stephanie had expressed that she expected Johnathon to be
9 arrested?

10 A. No.

11 Q. Were you talking to Stephanie during that period of time
12 about your conversations with the FBI?

13 A. No.

14 Q. On December 4th you received \$250 from the FBI, right?

15 A. I don't recall the date, but, yeah.

16 Q. Early December sound about right?

17 A. Yeah.

18 Q. Helping to pay for some Christmas gifts for the kids?

19 A. I suppose.

20 Q. Well, times were so tough that it was difficult to be able
21 to drive 60 miles, so \$250 probably went a long way, right?

22 A. Not really.

23 Q. Put a full tank of gas in your truck, right?

24 A. I use about four full tanks of gas a week just driving to
25 and from work, so --

1 Q. So, you got your transportation for a week paid for?

2 A. I could have. I don't recall everything I spend on gas,
3 cigarettes day to day.

4 Q. Now, when they signed you up as a confidential informant,
5 they didn't promise they were going to give you money, right?

6 A. No.

7 Q. But they did talk about the fact that it was possible that
8 you were going to get money, right?

9 A. Not at the first one, no.

10 Q. When did they first tell you it's possible you were going
11 to get money?

12 A. Within the next meeting or two.

13 Q. Before you actually got the money, right?

14 A. Yeah.

15 Q. And you continued to work with them?

16 A. Yeah.

17 Q. Was it the first time you had ever done this work as a
18 confidential informant?

19 A. Yeah.

20 Q. Is Stephanie together with Donny Trent now?

21 A. Yeah.

22 Q. Is that somebody you're friendly with as well?

23 A. Yeah.

24 Q. Are the four of you socializing these days?

25 A. Yeah.

1 Q. Are the kids playing together?

2 A. No.

3 Q. Do you watch Stephanie's kids from time to time?

4 A. Not right now, no.

5 Q. Did you watch Stephanie's kids from time to time after she
6 left Johnathon?

7 A. No.

8 Q. How come you didn't tell the FBI during the first
9 interview that the fight that you had with Johnathon Irish was
10 about money?

11 A. Because it wasn't relevant in the conversation.

12 Q. In fact, you didn't tell them the fight was about money
13 until shortly before this trial, correct?

14 A. Yeah.

15 Q. You knew it would be a crime to mislead them, correct?

16 A. I wasn't misleading anybody. It just wasn't a topic of
17 conversation.

18 Q. You just didn't give them the whole truth, right?

19 A. No.

20 Q. Well, you told them about a fight with Johnathon Irish,
21 right?

22 A. Yeah.

23 Q. And you told them what the fight was about, right?

24 A. Yeah.

25 Q. And you didn't tell them the fight was about money, right?

1 A. I suppose no, no, I didn't.

2 Q. But the fight was about money?

3 A. I guess it could have started that way, yeah.

4 Q. You guess it could have started that way? You told the
5 jury here this morning or before on direct examination that the
6 fight started about money, right?

7 A. Yes.

8 Q. You don't know for sure whether you're going to get paid
9 for your testimony here today, do you?

10 A. Absolutely not.

11 Q. But you think you might be, right?

12 A. No.

13 MR. FALKNER: May I have a moment, your Honor?

14 THE COURT: Yes.

15 (Pause)

16 MR. FALKNER: I have nothing further, your Honor.

17 THE COURT: Anything further from the government?

18 MS. WEILAND: Just a couple of quick questions, your
19 Honor.

20 REDIRECT EXAMINATION

21 BY MS. WEILAND:

22 Q. Mr. Roosa, I believe you covered this, but I just want to
23 make sure it's clear to the jury. During the time when you
24 sort of started socializing with Mr. Irish, beginning in last
25 winter, you did not know that he was a convicted felon; is that

1 correct?

2 A. No.

3 Q. So, as far as you knew, at that time Mr. Irish's
4 possession of those guns was totally legal?

5 A. Yeah.

6 Q. You mentioned that your place of work is in Littleton?

7 A. Yup.

8 Q. And you live in North Stratford?

9 A. (Witness nodded).

10 Q. I believe Attorney Falkner asked you whether that was 60
11 miles round trip, and I just want to make sure I'm clear. Is
12 it 60 miles round trip, or is that one way 60 miles?

13 A. It's round trip give or take 60 miles.

14 Q. But it takes you about an hour to get to work --

15 A. Yeah.

16 Q. -- from your home and about an hour to get back?

17 A. Yup.

18 Q. How many days a week do you work?

19 A. Five.

20 Q. In regards to your falling out with Johnathon, you said
21 initially the disagreement about the money didn't seem
22 particularly relevant?

23 A. No.

24 Q. And I believe you said that it might have started that
25 way. Did the disagreement eventually become about something

1 | larger than \$20?

2 A. Yeah.

3 Q. And what was that?

4 A. Him getting caught cheating on his wife.

5 Q. Okay.

6 A. Him accusing me and my wife of being the ones to spread
7 rumors and what not about it.

8 Q. Okay. So, in cross-examination Attorney Falkner asked you
9 some questions about that. I believe his question to you was
10 whether there was an accusation that Stephanie was cheating on
11 Johnathon. If I'm understanding you correctly now, you're
12 saying that the accusation was actually that Johnathon was
13 cheating on his wife?

14 A. Yes.

Q. And there was a blowup about that?

16 A. Oh, yeah.

17 Q. Did it get pretty heated?

18 A. Oh, yeah.

19 Q. And after that blowup did you sever ties at that point?

20 A. Yeah.

21 MS. WEILAND: I have nothing further, your Honor.

THE COURT: All right. Anything further?

23 MR. FALKNER: Very briefly.

RE CROSS-EXAMINATION

25 BY MR. FALKNER:

1 Q. I just want to be clear. You told the jury first, right,
2 that the fight was about 20 or \$30? Have I got that right?

3 A. Yes.

4 Q. And then now you're saying that the main object of the
5 fight was an accusation that Johnathon Irish had been cheating,
6 correct?

7 A. I'm saying the topic of the conversation of him and I
8 having an argument started with how I owed him money, but it
9 always reverted back to how we were scum bags and --

10 Q. Was this one conversation, or was this an ongoing series
11 of conversations now that you're talking about?

12 A. It was all one incident, but it was several phone calls
13 over the course of an hour or so. He kept calling and yelling
14 and screaming and hollering. So, it was multiple
15 conversations, but it was one argument in the same day.

16 MR. FALKNER: I have nothing further, your Honor.

17 THE COURT: Anything further from the government?

18 MS. WEILAND: No, your Honor.

19 THE COURT: All right. Mr. Roosa, you may step down.
20 Thank you, sir.

21 (Witness stepped down)

22 THE COURT: The government may call its next witness.

23 MS. KRASINSKI: The United States calls Special Agent
24 Forte.

25 THE CLERK: Agent Forte, please remain standing and

1 raise your right hand.

2 **JOHN FORTE**, having been duly sworn by the Clerk, was
3 examined and testified as follows:

4 THE CLERK: Thank you. Please state your full name
5 and spell your last name for the record.

6 THE WITNESS: John Forte, F-o-r-t-e.

7 THE CLERK: Thank you very much.

8 DIRECT EXAMINATION

9 BY MS. KRASINSKI:

10 Q. Agent Forte, where do you work?

11 A. I am a Special Agent with the Bureau of Alcohol, Tobacco,
12 Firearms and Explosives.

13 Q. How long have you worked there?

14 A. Over 17 years.

15 Q. What's your title?

16 A. Special Agent.

17 Q. And what are the duties and responsibilities of a Special
18 Agent with ATF?

19 A. We primarily have jurisdiction over the federal firearms,
20 explosives, alcohol, tobacco and arson statutes.

21 Q. Are you assigned to a particular office?

22 A. Yes. The Manchester, New Hampshire Field Office.

23 Q. And can you generally tell the jury what type of training
24 you've received to become a Special Agent with the ATF,
25 specifically regarding firearms?

1 A. Sure. Initially, you go to two schools. Both of them are
2 held at the Federal Law Enforcement Training Center, which is
3 Georgia in Glynn County in Brunswick, Georgia, which is Glynn
4 County, which is often called "Glynco," which is an
5 abbreviation of Glynn County. The schools are approximately
6 six to seven months total for both schools. The first one is
7 called the Criminal Investigator Training Program, and then
8 ATF's add-on school afterwards when I went was called New
9 Professional Training.

10 Q. And do you have any specialty assignments?

11 A. I do. I'm a firearms instructor for my office, and I also
12 do interstate nexus examinations.

13 Q. So, let's first talk about your role as a firearms
14 instructor. What does it mean to be an ATF firearms
15 instructor?

16 A. For me it meant I had to go to a two-week school that was
17 actually put on by the Federal Law Enforcement Training Center
18 in Cheltonham, Maryland, and that school primarily teaches you
19 -- for us it would be a review of much of what we know about
20 firearms and nomenclature and what not; but for other people
21 who are not ATF agents that go to that same school it's kind of
22 new for them. But the rest is really designed on how to teach
23 individuals how to shoot, what the qualification standards are
24 and why there are qualification standards, as well as teaching
25 individuals that have trouble with qualifications how to

1 correct that and become better shooters.

2 Q. Now, you also mentioned that you're an interstate nexus
3 examiner. First, what is an interstate nexus determination?

4 A. It determines whether a firearm or ammunition has traveled
5 in or affected interstate or foreign commerce.

6 Q. And what's the training that you received to become an
7 interstate nexus examiner?

8 A. The initial training that I went to was a week-long, and
9 it was held at the National Tracing Center, ATF's National
10 Tracing Center, which is in Martinsburg, West Virginia.

11 Q. And is there anything that happens before you attend that
12 training?

13 A. They do provide you with a precourse material. You're
14 required to review and know that precourse material. When you
15 arrive, the first thing they have you do is take a test. If
16 you do not pass that test you are not allowed to continue with
17 the program. They'll send you home.

18 Q. So, did you get those materials?

19 A. I did.

20 Q. Did you take the test?

21 A. I did.

22 Q. Did you pass the test?

23 A. I did.

24 Q. What happens next?

25 A. You then participate in the course for the rest of the

1 week, and they basically go over what an interstate nexus
2 determination is comprised of, markings and all of that type of
3 stuff, and then at the end of it there's another test, and you
4 pass that, and you become certified with ATF as an Interstate
5 Nexus Examiner.

6 Q. And you did all of that?

7 A. I did.

8 Q. Now, I want to talk about something else that is at ATF's
9 National Tracing Center in West Virginia. Does ATF have, I'll
10 call it a library or catalog of firearms?

11 A. Yes.

12 Q. Can you describe that?

13 A. It's a vault, and it contains over 10,000 different
14 firearms, and I've spent over -- because I did go to an
15 additional follow-up training there a couple -- four years
16 later from my initial training. So, between those two
17 trainings I've spent at least two full days in that vault
18 reviewing and looking at firearms and comparing models,
19 different variations of the same models and mostly just looking
20 over the nuances and differences between the firearms.

21 Q. And does the library at least or catalog at least attempt
22 to have one of every firearm recently manufactured?

23 A. They do. They have quite a few. I can't say that they
24 have every single one, but they have a lot of them.

25 Q. They certainly try to?

1 A. Yes.

2 Q. Has historic firearms?

3 A. Yes.

4 Q. And so, you've had a chance to analyze all of those
5 firearms?

6 A. I did.

7 Q. And you also mentioned some follow-up training. What was
8 that?

9 A. There was a secondary school, which was an advanced
10 firearms interstate nexus school. It was held, again, at the
11 National Tracing Center in Martinsburg, West Virginia. That
12 particular school was in addition -- they went over additional
13 information regarding markings; they provide us with some
14 additional reference materials, books; and then there was some
15 additional training where they wanted us to be able to
16 recognize if I look at a firearm that may have been altered to
17 be, for instance, let's say may have been altered to function
18 as a machine gun, things to look for that might be indicative
19 of that type of thing.

20 Q. Now, during your career have you visited firearms
21 manufacturing plants?

22 A. I have.

23 Q. Which plants?

24 A. Within the State of New Hampshire I've visited Sig Sauer
25 and Ruger. I've also visited O.F. Mossberg & Sons, Kahr Arms,

1 Smith & Wesson, and Colt and Colt Defense.

2 Q. Have you also visited ammunition manufacturing plants?

3 A. I have.

4 Q. And which plants?

5 A. I visited Winchester, Remington and Sig Sauer.

6 Q. Now, in addition to the experience and training that you
7 just described, do you have access to periodicals or reference
8 materials that you use in conducting your analysis?

9 A. I do.

10 Q. Can you describe that?

11 A. I have ATF databases that I can look at, I have reference
12 material that either I've personally bought -- and these are
13 books or periodicals -- or that they've been provided to me
14 through the agency. There are -- I look at -- sometimes I'll
15 look at the manufacturer's website. I talk to manufacturer
16 employees. Manuals oftentimes, too, are things that I will
17 look at of a firearm.

18 Q. And the ATF databases, one of the items in the ATF
19 databases, would that be a trace?

20 A. That is correct.

21 Q. What's a "trace"?

22 A. So, we are not allowed to have a database of everything
23 that's ever been purchased by people. That's against the law.
24 So, in order for an individual -- for an agent, I should say,
25 to find out the original purchaser on a firearm that's

1 recovered, we would fill out a form, either a written form or
2 go online to the database, and make a request for a trace. So,
3 we have to put all the firearm information in, and we submit it
4 to the tracing center, and they then contact the manufacturer.
5 Sometimes that's phone calls, sometimes that's materials that
6 they have on hand, and sometimes it's databases that allow them
7 to, as I understand it -- I've never done it personally -- but
8 allow them to have access to something that the manufacturer
9 allows them to have access to so they don't actually have to
10 bother an employee, so to speak, at the manufacturer to get the
11 information. That way it's less time and money for the
12 manufacturer.

13 Q. And so, if I'm understanding you correctly, ATF has access
14 to some manufacturer records?

15 A. Yes.

16 Q. And does -- can it also include, for example, tracking
17 down what's known as 4473?

18 A. That is correct.

19 Q. What's a 4473?

20 A. That is a form that an individual completes when they're
21 going to purchase a firearm. It will have all their
22 biographical information on it, and it's required to be
23 completed when they buy a firearm from a licensed dealer.

24 Q. And are all of those things you mentioned, the electronic
25 databases, the periodicals, discussions with manufacturers,

1 e-traces, are all of those materials reasonably relied upon by
2 experts in the field?

3 A. They are.

4 Q. Now, how long have you been an Interstate Nexus Examiner?

5 A. I went to that school in April of 2014, the initial one.

6 Q. In your career how many nexus determinations have you
7 made?

8 A. I've made over 50.

9 Q. Now, one determination, does that correlate to a single
10 firearm?

11 A. It does not.

12 Q. Can you explain that?

13 A. So, a lot of times they'll be on a case basis, and if
14 multiple firearms and sometimes hundreds, maybe even thousands
15 of rounds, were recovered in one single case, then a lot of the
16 time all that ammunition and all the firearms that are
17 recovered will be on one single nexus determination that I
18 make.

19 Q. So, for example, in this case were you asked to analyze
20 three firearms for nexus?

21 A. I was.

22 Q. And even though it's three firearms, it's one single
23 determination?

24 A. That is correct.

25 Q. So, over 50 determinations, how many individual firearms

1 do you think you've analyzed for nexus?

2 A. At least over 100.

3 Q. And what about rounds of ammunition?

4 A. Hundreds to thousands.

5 Q. Do you only provide nexus examinations for ATF
6 investigations?

7 A. No.

8 Q. Who else do you provide nexus determinations for?

9 A. I've provided them to Drug Enforcement Agency, DEA, to the
10 FBI, to the United States Postal Service, and then I've
11 provided them as well to local and state law enforcement when
12 they're bringing a case to be prosecuted at the United States
13 Attorney's Office.

14 Q. In the State of New Hampshire are there any other
15 interstate nexus examiners?

16 A. No.

17 Q. So, if there is any firearm that requires an interstate
18 nexus examination recovered in the State of New Hampshire do
19 you do that examination?

20 A. I do.

21 Q. So, you said you've been an Interstate Nexus Examiner
22 since 2014. Despite that, have you ever been called upon to
23 provide trial testimony as to nexus?

24 A. No.

25 Q. First time?

1 A. Yes.

2 MS. KRASINSKI: Your Honor, at this time I move to
3 qualify Agent Forte an expert in interstate nexus
4 determination.

5 THE COURT: Any objection?

6 MR. FALKNER: Not as to the generalized finding that
7 he is an expert.

8 THE COURT: All right. The record will so reflect.

9 Q. Now, Agent Forte, as it relates to firearms that are
10 produced after 1968, are they required to have certain
11 markings?

12 A. Yes.

13 Q. And what are they?

14 A. If the firearm was made within the United States, it's
15 required to have the manufacturer name on there as well as the
16 city, state that they operate out of. They are supposed put to
17 the model, if they've designated one, the caliber of the gauge,
18 and then the serial number.

19 Q. And if a firearm is manufactured out of the country and
20 imported into the United States are there markings required to
21 be on that firearm?

22 A. Yes.

23 Q. Can you explain those, please?

24 A. So, it is roughly the same, except there's a few
25 variations. You need to have the manufacturer's name, so the

1 original manufacturer that made it, the country of origin of
2 where that was manufactured. You then still have to have the
3 model, if it's designated, the caliber and the gauge -- or the
4 caliber or the gauge, I should say -- the serial number, and
5 then the importer, the person that imported it into the United
6 States for sale, that company's name needs to be on there as
7 well as their city, state.

8 Q. Now, let's talk about nexus examinations generally. So,
9 let's talk about the practical application. Someone gives you
10 a firearm.

11 A. Mm-hmm.

12 Q. What's the first step?

13 A. The first step is looking at the firearm from all -- you
14 know, left, right, top, bottom, the back, back strap, the
15 front, looking the firearm over and marking down all of the
16 information that I see and all the markings that are on the
17 firearm.

18 Q. And you mentioned you visited some firearm manufacturing
19 plants here in New Hampshire. So, what firearms manufacturers
20 are here in New Hampshire?

21 A. The large-scale commercial manufacturers that are here are
22 Ruger and Sig Sauer.

23 Q. So, let's say you've got a firearm, and, by looking at the
24 initial markings, it appears that the firearm may have been
25 manufactured here in New Hampshire. Are there additional steps

1 that you can take to determine whether or not the firearm
2 traveled in interstate or foreign commerce?

3 A. Yes.

4 Q. What can you do?

5 A. So, I can look at the ATF tracing database, as well as I
6 can speak with members or I should say employees of the
7 manufacturer.

8 Q. Now, were you asked to make a nexus determination for
9 certain firearms in this case?

10 A. I was.

11 MS. KRASINSKI: Permission to approach, your Honor?

12 THE COURT: Yes.

13 Q. Handing you Government's Exhibit 5, do you recognize that
14 firearm?

15 A. I do.

16 Q. Is that one of the firearms that you analyzed in this
17 case?

18 A. It is.

19 Q. Did you also function test the firearm?

20 A. I did.

21 Q. Did it work?

22 A. It did.

23 Q. Is it a firearm?

24 A. It is.

25 Q. Designed to expel a projectile by means of an explosive?

1 A. Yes.

2 Q. Now, if you take a look at that, were you able to
3 determine the manufacturer of that firearm?

4 A. Yes. It's Sig Sauer, Incorporated, and that's located in
5 Exeter, New Hampshire.

6 Q. And because this firearm was manufactured in New
7 Hampshire, did you take additional steps to determine whether
8 or not it had, in fact, traveled in interstate commerce?

9 A. I did.

10 Q. What did you do?

11 A. I reviewed tracing information, and I contacted the
12 manufacturer.

13 Q. And, based on that, what did you learn?

14 A. That it was manufactured here in the State of New
15 Hampshire, in Exeter.

16 Q. And did it travel in interstate commerce?

17 MR. FALKNER: Objection.

18 A. It did.

19 MR. FALKNER: Can we be seen at sidebar?

20 THE COURT: Yeah.

21 MR. FALKNER: I move to strike the answer pending the
22 sidebar.

23 THE COURT: Approach.

24 (SIDEBAR CONFERENCE AS FOLLOWS):

25 MR. FALKNER: Your Honor, the First Circuit law is

1 clear that he can rely on hearsay, but in this case, first of
2 all, there's been -- from what I can see, what we have here in
3 his determination is the mere repetition of out-of-court
4 statements of others. That's Cormier 468 F.3d --

5 THE COURT: Am I going to need to take a break to
6 decide this issue? This could have been briefed ahead of time.
7 This is an expert witness. I don't think I have an expert
8 instruction even in my instructions at this point. So, this is
9 an issue that could have been brought to my attention. Go
10 ahead.

11 MS. KRASINSKI: I don't have it with me. The First
12 Circuit has clearly held that nexus experts can both rely on
13 manufacturer statements and tracing records, that they need not
14 be admissible at trial to be a basis of their opinion, and so,
15 his testimony is that he both spoke to the manufacturer and
16 looked at tracing records. Both of those are well within what
17 the First Circuit authorizes.

18 THE COURT: Give me the case name.

19 MS. KRASINSKI: May I go grab my --

20 THE COURT: Go ahead.

21 (Pause)

22 MS. KRASINSKI: So, United States versus Cormier, 468
23 F.3d. 63, says that an ATF examiner may rely, in part, on
24 public and nonpublic ATF records, trace records, for example.
25 United States versus Corey, 207 F.3d. 84: Interstate nexus may

1 be proved with ATF expert testimony, and that the ATF examiner
2 may rely, in part, on information received from manufacturers
3 under Rule 703 as the type of information reasonably relied
4 upon by experts in the field. And Luna 649 F.3d. 91 on the
5 interstate nexus element, that talks about that experts may
6 rely on technical manuals, conversations with manufacturers,
7 ATF manufacturing records and prior experience.

8 THE COURT: Okay.

9 MS. KRASINSKI: And Rule 703 states that facts or data
10 need not be admissible if they are the type reasonably relied
11 upon by experts in the particular field.

12 MR. FALKNER: I agree with all of that, your Honor.
13 My point is, nonetheless, Cormier says that the mere repetition
14 of the out-of-court statements of others is not enough, and in
15 this case he hasn't indicated whether he's relying on records
16 or the statement. He hasn't designated -- he hasn't even said
17 who he spoke to, and there's no way that your Honor can
18 determine whether he's simply repeating hearsay or actually
19 making an opinion based on the testimony that's been admitted.
20 There was absolutely no foundation laid to it. She just simply
21 asked, "Did you speak to the manufacturer?", and then, "In your
22 opinion did it travel in interstate commerce?"

23 MS. KRASINSKI: I believe I asked if he did both speak
24 to the manufacturer and review tracing records, but I can
25 certainly re-ask that if --

1 THE COURT: Okay. And if she inquires with respect to
2 the records he relied on, the statements he relied on, are you
3 saying that that is not enough under Cormier?

4 MR. FALKNER: It depends on the specific basis. I
5 just ask, if your Honor is going to admit it, that it be
6 admitted de bene and allow me to cross-examine him and then
7 either strike the evidence or let it stand at that time.

8 THE COURT: Okay. And can you ask him more questions
9 about how he developed the opinion and what his opinion is
10 precisely based on?

11 MS. KRASINSKI: I certainly can. What I can tell your
12 Honor is that the way that this is done is nexus experts look
13 at tracing records and speak to manufacturers. Sometimes they
14 can look at periodicals. He will say that he did that. Nexus
15 experts themselves do not run the trace records, and that's not
16 required. So, I just, to the extent that there's a question on
17 the underlying steps of the tracing, he won't have the answer
18 to that, but no nexus expert testifies to that.

19 THE COURT: So, you're telling me that the Circuit
20 case law, the established case law allows a person to simply
21 say, "I did X, I did Y," and not give details with respect to X
22 and Y to form his opinion?

23 MS. KRASINSKI: No. He can certainly give details as
24 to X and Y. What I'm saying is that nexus experts themselves
25 are not the ones that perform the trace at the National Tracing

1 Center. So, he can say, "I reviewed tracing records related to
2 this particular firearm." He cannot say, "I was the person
3 sitting in West Virginia that ran the trace."

4 THE COURT: Oh, but he reviewed the trace records.

5 MS. KRASINSKI: Yes.

6 THE COURT: He can talk about the trace records.

7 MS. KRASINSKI: Yes.

8 THE COURT: Well, then, perhaps establish more of a
9 foundation for that opinion.

10 And then you cross him, and then you approach at the
11 end and make your argument that I should tell the jury to
12 disregard his expert opinion.

13 MR. FALKNER: So, it's admitted de bene for now
14 pending a further objection at the completion of his testimony?

15 THE COURT: Is that what you're asking for, because if
16 you're not asking for that, and I assumed you were --

17 MR. FALKNER: Yes.

18 THE COURT: -- but if you are not asking for that I'm
19 taking a break and I'm going to research the question.

20 MR. FALKNER: No, I think that's fine. That's what
21 I'm asking for.

22 THE COURT: All right. Then, that is granted.

23 MR. FALKNER: Thank you.

24 THE COURT: Okay.

25 (END OF SIDEBAR CONFERENCE)

1 THE COURT: Go ahead, Attorney Krasinski.

2 Q. Now, with respect to Government's Exhibit 5, the Sig Sauer
3 1911 pistol --

4 A. Yes.

5 Q. -- you mentioned that you took additional steps to
6 determine whether or not it was ever shipped out of the State
7 of New Hampshire?

8 A. I did.

9 Q. And what were those steps again?

10 A. So, I looked at the tracing results in this particular
11 case. I don't believe I was the one that initially traced this
12 particular firearm, but I went into the database and retrieved
13 the trace results.

14 Q. And you reviewed those trace results?

15 A. I did.

16 Q. And, in addition to that, did you speak to the
17 manufacturer?

18 A. I did.

19 Q. And what do the trace results themselves indicate?

20 A. That, upon final completion and final assembly, the
21 completed firearm was shipped to a retailer or distributor in
22 the State of Minnesota.

23 Q. And do you recall the name of that distributor?

24 A. I believe it's Reeds Sporting Goods.

25 Q. So, the final -- after final assembly, according to the

1 trace records, that firearm was shipped from New Hampshire to
2 Reeds Sporting Goods in Minnesota?

3 A. That is correct.

4 Q. And following its initial shipment from New Hampshire to
5 Reeds Sporting Goods in Minnesota, did the tracing records
6 indicate where it went after that?

7 A. My memory is that it went back to a dealer here in New
8 Hampshire.

9 Q. Do you recall the dealer?

10 A. Bravo Company, I think it's Army Navy Surplus, but I don't
11 know if I remember the exact name.

12 Q. Would looking at the trace record refresh your
13 recollection?

14 A. It would.

15 Q. Take a look at that, and when you're done let me know.

16 A. Yes. It's Charlie Company Army Navy Surplus, and that's
17 here -- actually, they've been in at least two locations, but
18 here in New Hampshire.

19 Q. Is it in New Hampshire?

20 A. Yes.

21 Q. So, the tracing records indicate that it traveled from Sig
22 Sauer in New Hampshire to Reeds Sporting Goods in Minnesota?

23 A. Correct.

24 Q. And back to Charlie Company Army Navy Surplus in Epsom,
25 New Hampshire?

1 A. Correct.

2 Q. And you also spoke to the manufacturer in this case?

3 A. Yes.

4 Q. Related to Government's Exhibit 5?

5 A. Yes.

6 Q. And what was that conversation?

7 A. It was basically to confirm information that I had at the
8 time I was in the process of retrieving those. Usually,
9 anything that's made by Sig Sauer, I always go straight to
10 them, because the manufacturer is here in the state. Despite
11 what the trace results say, I always go to them and ask them
12 what their documents say.

13 Q. So, you both speak to the manufacturer and look at the
14 trace records?

15 A. Yes, to make sure it corroborates.

16 Q. And were you able to corroborate that this firearm
17 traveled from New Hampshire to Minnesota?

18 A. Correct.

19 Q. And the firearm, when it traveled from New Hampshire to
20 Minnesota, was it the fully assembled firearm?

21 A. At the time it was a fully assembled firearm. This
22 particular firearm has this compensator on the end. I don't
23 know if that was part of it at the time or not.

24 Q. So, based on your training and experience --

25 A. Mm-hmm.

1 Q. -- based on your conversation with the manufacturer, your
2 review of the tracing records that ATF conducts, did you form
3 an opinion as to whether or not Government's Exhibit 5, that
4 Sig Sauer model 1911 pistol, traveled in or affected interstate
5 commerce?

6 A. I have.

7 Q. And what is your opinion?

8 A. It has traveled in or affected interstate commerce.

9 MR. FALKNER: Objection.

10 THE COURT: Your objection is noted and preserved.

11 MR. FALKNER: Thank you.

12 Q. Handing you Government's Exhibit 6 --

13 MR. FALKNER: Your Honor, may we be seen at sidebar?

14 THE COURT: Yes.

15 (SIDEBAR CONFERENCE AS FOLLOWS):

16 MR. FALKNER: If this is testimony about the
17 interstate nexus of this firearm, I just object to that insofar
18 as that it's been struck from the indictment. If it's just
19 that he test fired it and it works, then I don't necessarily
20 have a problem. I just, given that we're bringing this firearm
21 forward, I want to make sure --

22 MS. KRASINSKI: He's going to testify that he examined
23 it, that he test fired it, that he could not determine after
24 final assembly whether or not it traveled in interstate
25 commerce.

1 THE COURT: Okay.

2 MR. FALKNER: That's fine.

3 THE COURT: The cases do not deal with trace records.
4 So, he's spoken to the manufacturer and he's used trace
5 records. That's what I've heard so far about the 1911. Do you
6 have case law on trace records as --

7 MS. KRASINSKI: Trace records are considered within
8 ATF electronic databases. ATF maintains nonpublic data, so the
9 cases do deal with ATF nonpublic data. I can confirm with him
10 that e-trace records are ATF nonpublic materials.

11 THE COURT: Okay.

12 MS. KRASINSKI: And I believe he testified that
13 e-trace records are records reasonably relied upon by experts
14 in the field.

15 THE COURT: Yes. Yes, he did. And so, the issue
16 remains whether trace records are hearsay he's repeating,
17 essentially, or whether it's his own independent source,
18 knowledge, and I think in Luna there were ATF records, the
19 database, there were conversations with the manufacturer, there
20 were also markings on the gun itself that the ATF agent
21 testified about. So, the Court held that that was sufficient.
22 But the Court in Cormier definitely said, "I cannot find him an
23 expert based on just repetition of hearsay."

24 MS. KRASINSKI: I think if he was exclusively relying
25 on his conversations with manufacturers, that I don't think he

1 can do that. I don't think he can say, "I spoke to the
2 manufacturer. That in and of itself led me to conclude that
3 this traveled in interstate commerce." If that was his
4 testimony, I would agree.

5 THE COURT: You say trace records, though, are not
6 considered hearsay? They would be independent sources for
7 him --

8 MS. KRASINSKI: Correct.

9 THE COURT: -- to draw his opinion from?

10 MS. KRASINSKI: Yes.

11 THE COURT: Okay. And are you disagreeing with that?

12 MR. FALKNER: I do disagree. What I'm saying is that
13 they are hearsay. An expert can review hearsay and apply some
14 reliable methodology after reviewing the hearsay to render an
15 opinion. What he's doing here is simply saying, "I read these
16 documents. They say this. That's my opinion."

17 THE COURT: I think he's doing more than that. He's
18 looking at the trace records. They say one thing. He is also
19 speaking to the manufacturer, and that's corroborating his
20 opinion that he develops from the trace records. So,
21 ultimately --

22 MR. FALKNER: I intend to cross-examine him about
23 those conversations as well.

24 THE COURT: All right. Okay. So, now you're going to
25 ask him about the -- I forget which exhibit.

1 MS. KRASINSKI: Exhibit 6.

2 THE COURT: Exhibit 6. All right. Go ahead.

3 (END OF SIDEBAR CONFERENCE)

4 Q. Agent Forte, as I was saying, you're looking at
5 Government's Exhibit 6. Is that a firearm that you were asked
6 to review in this case?

7 A. Yes.

8 Q. And did you also test fire that firearm?

9 A. I did.

10 Q. Did it work?

11 A. It did.

12 Q. Is it, in fact, a firearm?

13 A. It is.

14 Q. Designed to expel a projectile by means of an explosive?

15 A. Yes.

16 Q. Now, if you look at that firearm, were you able to
17 identify markings that indicate where it was manufactured?

18 A. Yes.

19 Q. And, based on those markings, can you identify where this
20 firearm was manufactured?

21 A. In Exeter, New Hampshire.

22 Q. Now, because those markings indicate that it was
23 manufactured in Exeter, New Hampshire, did you take additional
24 steps to determine whether or not that fully assembled firearm
25 had ever traveled in interstate commerce?

1 A. I did.

2 Q. And what steps did you take?

3 A. The tracing and speaking with Sig Sauer.

4 Q. And were you able to conclusively determine whether or not
5 that fully assembled firearm ever crossed state lines?

6 A. I was not able to determine that it had crossed state
7 lines fully assembled.

8 Q. I'm handing you what's been marked as Government's Exhibit
9 7 and 7A.

10 A. Thank you.

11 Q. Government Exhibit's 7, is that one of the firearms you
12 were asked to examine in this case?

13 A. It is.

14 Q. You've got 7 and 7A. It appears to be in two pieces. Is
15 it broken?

16 A. No.

17 Q. Can you explain?

18 A. It appears that the shoulder stock has been separated from
19 the frame. It appears that one bolt would reattach it.

20 Q. Now, did you function test that firearm?

21 A. I did.

22 Q. Did you reattach them before you function tested it?

23 A. I did not.

24 Q. So, Government's Exhibit 7 that you're holding in your
25 hands now --

1 A. Mm-hmm.

2 Q. -- you function tested it just like that?

3 A. I did.

4 Q. Did it work?

5 A. It did.

6 Q. Is it a firearm?

7 A. It is.

8 Q. Designed to expel a projectile by means of an explosive?

9 A. Yes.

10 Q. Now, are there markings on that firearm?

11 A. There are.

12 Q. And what are those markings?

13 A. Well, it indicates on the right side of the firearm here
14 that it was manufactured by Zijiang Machinery Company in China.

15 Q. And were you able to determine, looking at those markings,
16 how that firearm was imported into the United States?

17 A. Yes. There's additional markings on the left side, which
18 indicate that it was CAI in Georgia Vermont, which is an
19 abbreviation for Century Arms, Incorporated in Georgia,
20 Vermont.

21 Q. And do you also independently know CAI, Century Arms,
22 Incorporated, to be located in Vermont?

23 A. Yes.

24 Q. So, if that firearm was recovered in New Hampshire, it
25 would have gone from China to Vermont to New Hampshire?

1 A. Yes.

2 Q. And based on your review of those markings, your training
3 and experience, did that firearm, Government's Exhibit 7, the
4 Zijiang Machinery Company model Catamount Fury 12-gauge
5 shotgun, travel in or affect interstate commerce?

6 A. Yes, it has.

7 MS. KRASINSKI: One moment, your Honor.

8 (Pause)

9 MS. KRASINSKI: Nothing further, your Honor.

10 CROSS-EXAMINATION

11 BY MR. FALKNER:

12 Q. Sir, with regard to the 1911 pistol --

13 A. Yes.

14 Q. -- I just want to be clear exactly what it was that you
15 did.

16 A. Mm-hmm.

17 Q. You looked at the firearm?

18 A. Correct.

19 Q. You read the markings on it?

20 A. Correct.

21 Q. And those markings demonstrated that it was manufactured
22 at Sig Sauer, correct?

23 A. Correct.

24 Q. And you determined that it was manufactured at the Sig
25 Sauer plant in New Hampshire, correct?

1 A. It stated that on there, but I followed up to make sure
2 that it was.

3 Q. And then you reviewed a trace document, correct?

4 A. Correct.

5 Q. And that trace document said that it had been shipped to a
6 wholesaler outside of the State of New Hampshire and that it
7 had been shipped back, correct?

8 A. Correct.

9 Q. And so, that's what a document told you, correct?

10 A. I don't know which one I did first, whether I got the
11 email or I reviewed the trace, but I did review both.

12 Q. When you say you reviewed an email, what are you talking
13 about?

14 A. So, my contact with Sig Sauer was via email.

15 Q. So, when you said you had a conversation, you didn't
16 actually talk to anybody?

17 A. We had been back and forth. I requested, he came back. I
18 often refer to email conversations as "conversations."

19 Q. Who did you speak with?

20 A. Jeff Anderson. He's their senior compliance, ATF
21 compliance.

22 Q. And so, you emailed Jeff Anderson?

23 A. Correct.

24 Q. And you said something along the lines of, "I have some
25 records that say this firearm was shipped from New Hampshire to

1 a sporting goods facility out of state and then shipped back.

2 Do you have the same records"?

3 A. I don't even believe I said that. I just said, "I have
4 these two firearms. I'm looking for assistance in determining
5 whether they've traveled interstate. Could you please tell me
6 if they were manufactured in Exeter?" I obviously now have
7 other facilities within New Hampshire. "Was it at Exeter?"

8 And he knows from previous contacts that I'm looking
9 for an exact location of where it was manufactured, and then
10 I'm looking to see if it's left the state. I believe I asked
11 for that, the 1911, and the SIG516 rifle in the same email.

12 Q. And you asked him if it had left the state?

13 A. Correct.

14 Q. And he told you, "Yes, it left the state"?

15 A. The 1911 had left the state, yes, and it had gone to Reeds
16 Sporting Goods.

17 Q. And did he tell you what documents, if any, he had relied
18 upon to tell you that statement?

19 A. Their records.

20 Q. Okay. So, a representative from Sig Sauer told you the
21 records of Sig Sauer demonstrated that this weapon traveled to
22 Minnesota?

23 A. Correct.

24 Q. And you independently reviewed other weapons -- sorry.
25 You independently reviewed records within ATF that told you

1 this weapon traveled to Minnesota, correct?

2 A. Correct.

3 Q. And what did you do with those two pieces of information?

4 A. I used them to generate my nexus.

5 Q. And when you say you used them to generate your nexus,
6 right here in this courtroom you're just simply repeating what
7 you read, right?

8 A. What I read. So, what I requested and then what I
9 corroborated and what I was given by the manufacturer and what
10 I found in the trace results, I then, yes, used that to create
11 my nexus, in this case a memo.

12 Q. Let me ask you this in a different way. You had two
13 pieces of information to tell you that this firearm had
14 traveled in interstate commerce, correct?

15 A. What two pieces are you referring to?

16 Q. The trace record.

17 A. Mm-hmm.

18 Q. And the email from the gentleman at Sig Sauer, correct?

19 A. That's correct.

20 Q. And each of those two pieces of information told you that
21 this firearm traveled in interstate commerce, correct?

22 A. Correct.

23 Q. And when you received those two pieces of information,
24 what you're telling the jury here today is, essentially,
25 "That's what those two pieces of information told me"?

1 A. They did tell me that, yes.

2 Q. Did you do anything to determine whether that information
3 was accurate other than receiving those two pieces of
4 information?

5 A. No.

6 Q. Did you use any particular expertise other than simply
7 reading those documents which told you what you're telling the
8 jury here today?

9 A. It's been my experience that you're not doing any better
10 than straight from the manufacturer when you're dealing with a
11 manufacturer within your state.

12 Q. Let me ask it to you a different way. Is there any
13 information that you're telling the jury here today that isn't
14 available from simply looking at those two pieces of -- those
15 two documents that you reviewed?

16 A. No. The information I gave is from those documents.

17 Q. You're simply repeating the information from those
18 documents here for this jury?

19 A. In this particular case, yes.

20 MR. FALKNER: Your Honor, may we be seen at sidebar?

21 THE COURT: Yes.

22 (SIDEBAR CONFERENCE AS FOLLOWS):

23 MR. FALKNER: At this time I would move to strike his
24 opinion as to interstate nexus.

25 MS. KRASINSKI: Your Honor, he is allowed to rely on

1 ATF records. The ATF record is the e-trace. The e-trace
2 detailed that the firearm traveled from New Hampshire to
3 Minnesota. He testified that those records are sometimes
4 created by access to manufacturing records. He testified that
5 sometimes they are 4473s. This is the way in which nexus is
6 done. But Attorney Falkner is essentially asking for a witness
7 with personal knowledge who traveled with the firearm to
8 Minnesota to say, "Oh, yes, that's how this was done."

9 Nexus -- interstate nexus doesn't work like that. The
10 First Circuit has held that interstate nexus examiners can rely
11 on ATF records in conjunction with manufacturer statements and
12 communications. That is what he did here. He obtained the
13 records, he reviewed them, he contacted his sources within the
14 manufacturer to confirm that that was accurate. He made sure
15 that they matched up, and they did. Once that happens, he
16 doesn't need to take any additional steps.

17 MR. FALKNER: Your Honor -- I'm sorry.

18 THE COURT: Go ahead.

19 MR. FALKNER: There's nothing expert about it. He
20 just simply read two documents and repeated it for the jury,
21 and that's exactly what he just testified to.

22 THE COURT: You're just making this objection with
23 respect to the 1911 --

24 MR. FALKNER: Correct.

25 THE COURT: -- Exhibit 5?

1 MR. FALKNER: Yes, because, your Honor, the difference
2 is the other firearm has markings that demonstrate that it came
3 from China. There's a difference. This is not -- he didn't
4 contact the manufacturer to find out -- it's one thing if he
5 contacts the manufacturer and they say, "Our factory is in
6 Georgia," and he knows the factory is in Georgia. That's
7 specialized knowledge that he has that's coupled with it. Here
8 Sig Sauer isn't telling him something that he's adding onto.
9 They're telling him -- it's just simply hearsay. A business
10 record of Sig Sauer theoretically could be admissible hearsay.
11 It's not on the government's exhibit list.

12 THE COURT: If it were just the statements of the Sig
13 Sauer manufacturer, I would rule in your favor, but the case
14 law shows that reliance on the ATF records, the trace
15 documents, in addition to everything else -- he looked at the
16 markings, he studied the gun, he then ran the trace through the
17 nonpublic ATF database. He then corroborated that with the
18 hearsay statements, and then, based on his training and
19 experience, he concluded that this was shipped interstate, and
20 703 allows an expert to base his opinion on facts or data in
21 the case the expert's been made aware of or personally
22 observed. If experts in the particular field would reasonably
23 rely on those kinds of facts or data to form an opinion on the
24 subject, which we've heard testimony they would, they need not
25 be admissible for the opinion to be admitted. So, I am

1 overruling your objection, and the evidence stands.

2 (END OF SIDEBAR CONFERENCE)

3 Q. One last question. Did you have any contact with Reeds
4 Sporting Goods?

5 A. No.

6 Q. Did you ever confirm whether they actually received this
7 firearm?

8 A. No.

9 MR. FALKNER: I have nothing further, your Honor.

10 THE COURT: All right. Anything further?

11 MS. KRASINSKI: Just a brief question.

12 REDIRECT EXAMINATION

13 BY MS. KRASINSKI:

14 Q. Government's Exhibit 5, this 1911 pistol, did it travel in
15 interstate commerce?

16 A. It did.

17 MS. KRASINSKI: Thank you. No further questions, your
18 Honor.

19 MR. FALKNER: And, your Honor, I move to strike.

20 THE COURT: Objection noted. Overruled.

21 Agent Forte may step down. Thank you, sir.

22 THE WITNESS: Thank you, your Honor.

23 (Witness stepped down)

24 MS. KRASINSKI: May we approach briefly?

25 THE COURT: Yes. Why don't we let the jury not have

1 to sit through that. We'll let you take a break now, and then
2 we'll come back for the next witness.

3 THE CLERK: All rise for the jury.

4 (The jury exited the courtroom at 3:43 p.m.)

5 JURY NOT PRESENT

6 THE COURT: Please be seated. All right. We'll take
7 a break in a moment. I just want to check in with counsel. Go
8 ahead, Attorney Krasinski.

9 MS. KRASINSKI: Yeah. I just wanted to address sort
10 of a timing and scheduling issue. Obviously, we will need to
11 meet with Attorney Kennedy before Mr. Roya can testify. We
12 have him and one other witness. Given that we know now that
13 we're going to go into tomorrow, and the way that the evidence
14 will make the most sense to the jury, I was going to ask that
15 maybe we be allowed to end the day early today so that we can
16 have time to meet with Mr. Kennedy to sort of figure out how
17 that -- what's going to happen with that, and then begin with
18 him, followed by Agent Tongbua, tomorrow morning.

19 THE COURT: I am going to have you meet with
20 Mr. Kennedy. I think, based on the argument, it will take five
21 or ten minutes max for him to understand what the issue is,
22 based on that exhibit, explain to Attorney Kennedy what the
23 issue is so he can properly advise his client, and then we can
24 move right into his client, potentially.

25 MS. KRASINSKI: Okay.

1 THE COURT: So, I would rather take a little bit
2 longer break now than send the jury home early, where they came
3 in at noon. So, let's see if you can't get Mr. Kennedy up to
4 speed fairly quickly, and then hopefully we can perhaps -- I
5 don't know if you could go ahead with Agent Tongbua at 4:00 and
6 let Attorney Kennedy actually speak to his client.

7 MS. KRASINSKI: We can. My concern is that the jury
8 might not understand some of his testimony without first having
9 heard Gary Roya's, but if the Court wants us to do it that way,
10 we will do it that way.

11 THE COURT: Okay. All right. Well, we will check
12 back in. Let's go till 4:00. See if you can't get Attorney
13 Kennedy up to speed.

14 Thank you, Attorney Kennedy, for coming in on short
15 notice. Hopefully, this will be a fairly discrete issue and
16 one both counsel can explain to you so that you can just
17 inquire with your client and find out if he's going to have a
18 Fifth Amendment issue or not. The government is convinced he
19 will not. Defense counsel has raised the possibility of one.
20 I think they can explain that to you. And if you would play
21 that role for the Court, the Court would appreciate it.

22 MR. KENNEDY: Thank you, your Honor. I will.

23 THE COURT: All right. Thank you very much.

24 THE CLERK: All rise.

25 (Recess taken from 3:47 p.m. to 4:11 p.m.)

1 THE CLERK: All rise for the Honorable Court.

2 THE COURT: Before I bring in the jury, I want to
3 check in about Mr. Roya and Attorney Kennedy. Do you need more
4 time to speak to him, sir? Because, if you do, I will
5 certainly allow it.

6 MR. KENNEDY: No. I spent a good hour with him prior
7 to coming into this court, and I spoke with the counsel, the
8 lawyers, and I had asked him the questions I needed to ask him
9 with regards to his testimony and what he was going to say and
10 what his thoughts were and what his intentions were with
11 regards to why this all went down. I'm comfortable.

12 THE COURT: Okay. I missed the last part.

13 MR. KENNEDY: I'm comfortable that we've had enough
14 time to talk about it.

15 THE COURT: Okay. And is this going to be a situation
16 where he would need immunity to testify?

17 MR. KENNEDY: No.

18 THE COURT: Okay. All right. And you've explained to
19 him the whole issue with respect to the texting and the
20 knowledge that Attorney Falkner was concerned about? There are
21 texts in the record. Did you get a chance to see those?

22 MR. KENNEDY: I did look at the texts. I did not
23 discuss with him specifically about the texts and the knowledge
24 issue that the Court -- I mean, I looked --

25 THE COURT: Did you explain to Attorney Kennedy what

1 the issue was?

2 MR. FALKNER: Your Honor --

3 THE COURT: You didn't have time?

4 MR. FALKNER: No. I started to speak to Attorney
5 Kennedy, and I started to explain to him about the text
6 messages, and he said that he had them.

7 MR. KENNEDY: I said I have the texts, and I
8 understand the -- I guess I was wrong, and I should have given
9 him more time to explain to me the text messages.

10 THE COURT: That's the whole issue.

11 MR. KENNEDY: Let me spend a few minutes with Attorney
12 Falkner, if that's okay.

13 THE COURT: All right. I will give you that time.
14 We've, obviously, got the jury waiting. So, I'm just going to
15 stay on the bench and hopefully the two of you -- you can
16 explain to him what the issue is, and perhaps he can consult
17 with his client. And give me a signal, because we're going to
18 put the government's last agent on in his place and keep the
19 trial moving.

20 MR. KENNEDY: I understand.

21 THE COURT: And, then, that will give you more time,
22 if you need it. So, just signal me after you've had a chance
23 to consult with Attorney Falkner.

24 MR. KENNEDY: Okay.

25 THE COURT: I'll give you leave, Attorney Falkner.

1 MR. FALKNER: Thank you, your Honor.

2 THE COURT: I'm just going to stay here, though. So,
3 Donna, it might be good to let the jury know just a few
4 minutes.

5 | (Pause)

6 MR. KENNEDY: If I could have a copy of Exhibit 30,
7 and then I'll take some more time to talk to my client just to
8 make sure you can go on with your other witness, and I can be
9 back tomorrow morning, or I can hang around as long as this
10 Court wants me to hang around.

11 THE COURT: I think what we'll do is finish up, if we
12 can, with the agent today, maybe part of tomorrow morning, and
13 then put Mr. Roya on. So, if you're here tomorrow morning that
14 would be ideal.

15 MR. KENNEDY: I'll do whatever the Court wants me to
16 do.

17 THE COURT: If you can meet with him and confirm that
18 there either are Fifth Amendment issues or there are not, and
19 if there are Fifth Amendment issues, obviously, the government
20 would need to know that and make decisions about the case and
21 whether or not they're going to give him immunity. But,
22 obviously, these are all issues you would want to discuss with
23 him.

24 MR. KENNEDY: Right.

25 THE COURT: Thank you, sir. Thanks very much.

1 THE CLERK: All rise for the jury.

(The jury entered the courtroom at 4:20 p.m.)

3 THE CLERK: Please be seated.

4 THE COURT: All right. The government may call its
5 next witness.

6 MS. KRASINSKI: Your Honor, the government calls
7 Special Agent Tongbua.

8 **SHAYNE TONGBUA**, having been duly sworn by the Clerk,
9 was examined and testified as follows:

10 THE CLERK: Thank you. Please state your full name,
11 spell your last name for the record.

12 THE WITNESS: Shayne Tongbua. T-o-n-q-b-u-a.

13 THE CLERK: Thank you very much. Be seated.

DIRECT EXAMINATION

15 BY MS. KRASINSKI:

16 Q. Good afternoon, Agent Tongbua.

17 A. Good afternoon.

18 Q. Where are you employed?

19 A. With the Federal Bureau of Investigation.

20 Q. How long have you been with the FBI?

21 A. Since 2009.

22 Q. What's your current title?

23 A. I am a Special Agent and, more specifically, I'm also a
24 Special Agent Bomb Technician.

25 Q. So, how long have you been a Special Agent?

1 A. Since 2016.

2 Q. Now, you've been with the FBI 11 years. So, you've been a
3 special agent for approximately four years?

4 A. Correct.

5 Q. What did you do before you became a special agent?

6 A. I've been a Certified Bomb Technician for my entire
7 duration with the Bureau, and I also spent two years as a
8 digital forensic examiner prior to becoming an agent.

9 Q. Can you briefly describe the training that you received in
10 order to become a special agent?

11 A. I attended the FBI Academy at Quantico, Virginia, which
12 now is approximately 20 to 21 weeks.

13 Q. And before the FBI what did you do?

14 A. I also served in the United States Army for approximately
15 six years.

16 Q. Now, I want to generally talk a little bit about the
17 procedure for signing up a confidential source. Is there a
18 particular procedure that you are required to follow?

19 A. Yes.

20 Q. Can you describe that?

21 A. Well, for starters, it's FBI policy that confidential
22 human sources, their admin. file is managed by a special agent.
23 So, they can be tasked, they can meet with task force officers
24 and other personnel, but the admin. file is opened and
25 maintained by the special agent.

1 Q. And so, just so that we're clear in context, you mentioned
2 "task force officer." Was there a task force officer that
3 assisted in the investigation of Johnathon Irish?

4 A. Yes. There were a couple.

5 Q. And who were those?

6 A. Primarily, Task Force Officer Kevin LeBlanc of New
7 Hampshire State Police and also Task Force Officer Brett
8 Fernald of Manchester Police.

9 Q. And we heard sort of a lot, generally, about motivation to
10 become a CHS or a confidential human source. When you're
11 opening this file, documenting this file, who is the person
12 that identifies the motivation of someone to become a CHS?

13 A. The individuals opening that file. So, primarily the
14 agent, but if a task force officer or another person has more
15 contact with that person they would do that in consultation.

16 Q. So, in this case that would be you?

17 A. Correct.

18 Q. And I just want to be clear. So, the source itself, for
19 example, Ms. Millett, she wouldn't say, "Well, my motivations
20 for becoming a confidential human source are," and then
21 describe. You would analyze your discussions with her and sort
22 of complete that on your own?

23 A. Correct. Perform that assessment.

24 Q. And what do you base that assessment on?

25 A. Just interactions with that individual.

1 Q. Now, I should ask were you involved in the investigation
2 into the defendant Johnathon Irish?

3 A. Yes.

4 Q. And, as part of that involvement, did you do the paperwork
5 to make Ms. Millett a confidential human source?

6 A. I did.

7 Q. And was that paperwork prepared on or about January 24th,
8 2019?

9 A. I believe so.

10 Q. Fair to say that Ms. Millett provided information that the
11 defendant had carried a pistol in his waistband and that the
12 defendant had at one point asked her to take custody of some
13 firearms?

14 A. I believe so, but I would have to check the dates on those
15 reports.

16 MS. KRASINSKI: One second.

17 (Pause)

18 MR. FALKNER: Your Honor, may we be seen at sidebar?

19 THE COURT: Yes.

20 (SIDEBAR CONFERENCE AS FOLLOWS):

21 MR. FALKNER: I didn't object based on hearsay, but I
22 think, if this is going to be extended discussions of
23 information that she provided at various points, that's clearly
24 hearsay, and we can't -- I don't think this witness can get
25 into that.

1 THE COURT: I don't know that she provided much more.

2 MS. KRASINSKI: All I'm intending to ask is the date
3 she provided that information as compared to the date she was
4 signed up as a CHS. That's it.

5 MR. FALKNER: That's fine, your Honor.

6 (END OF SIDEBAR CONFERENCE)

7 Q. So, we just talked about some information that Ms. Millett
8 provided, and do you recall the date that she provided that
9 information?

10 A. Not off the top of my head.

11 Q. Would looking at the 302 related to that interview help
12 you remember the date that she provided that information?

13 A. Yes, it would.

14 Q. Take a look at that, Agent Tongbua, and then, after you've
15 had a chance to review it, let me know.

16 A. Okay.

17 Q. Does that refresh your memory as to the date that she
18 provided that information?

19 A. Yes.

20 Q. What was the date that she provided that information?

21 A. It should have been January 16th, 2019.

22 Q. And that's before she became a confidential source,
23 correct?

24 A. That's correct.

25 Q. So, you also -- or did you also prepare the CHS paperwork

1 for Mr. Roosa?

2 A. Yes.

3 Q. And is the date of that paperwork November 25th, 2019?

4 A. I don't recall the specific date. The time frame sounds
5 right.

6 Q. If I showed you that paperwork, would that help refresh
7 your recollection as to the date?

8 A. Yes.

9 Q. Again, take a look at that and let me know when you've had
10 a chance to complete your review.

11 A. Okay.

12 Q. And does that help refresh your memory as to when the CHS
13 paperwork for Dylan Roosa was filled out?

14 A. Yes. That was the date it was initiated.

15 Q. And that was November 25th, 2019?

16 A. Correct.

17 Q. Now, Dylan Roosa, is it fair to say, provided information
18 to the FBI that he had seen a black footlocker box and that he
19 had seen the defendant with -- shoot the 1911 firearm and that
20 he had seen three firearms in that box? Do you recall the date
21 that he provided that information to the FBI?

22 A. I do not, because I was not present then.

23 Q. Would looking at the 302 prepared by the officer help
24 refresh your recollection as to that date?

25 A. Yes, it would.

1 MR. FALKNER: Objection, your Honor.

2 THE COURT: Sustained.

3 Q. Were you made aware of that information through the course
4 of this investigation?

5 A. Yes, I was.

6 Q. And did you learn of that information before you prepared
7 the confidential source document?

8 A. I believe I did.

9 Q. So, to the best of your recollection, that information was
10 provided to the FBI before he became a CHS?

11 A. Correct.

12 Q. Now, there's been a lot of physical evidence in this case;
13 is that fair to say?

14 A. Yes, there's been a good amount.

15 Q. Including three firearms?

16 A. Correct.

17 Q. Were any of the firearms sent out for fingerprint testing?

18 A. No.

19 Q. How come?

20 A. We didn't deem it pertinent to this investigation.

21 Q. Why not?

22 A. Because at the point we came into possession of those
23 firearms the information we had is that they had --

24 MR. FALKNER: Objection.

25 THE COURT: Overruled.

1 A. At the point at which we acquired those weapons the
2 information we had is that they had changed hands many times,
3 so it seemed that there was no point to try to connect those
4 weapons to the defendant via fingerprints.

5 Q. And is that because the investigation revealed that they
6 had been in the hands of Neil Prive?

7 A. Yes.

8 Q. And Gary Roya?

9 A. Yes.

10 Q. And that other people had touched and handled those
11 firearms?

12 MR. FALKNER: Objection.

13 A. Yes.

14 MR. FALKNER: Objection and motion to strike, your
15 Honor.

16 THE COURT: Approach, please.

17 (SIDEBAR CONFERENCE AS FOLLOWS):

18 THE COURT: You are asking him to essentially affirm
19 statements and information that have come from other witnesses.
20 I understand what you're doing. It's by way of summary.

21 MS. KRASINSKI: Your Honor, that's not what I'm
22 attempting to do. I'm attempting to have him explain why they
23 didn't fingerprint test the gun --

24 THE COURT: I understand that, but you asked him --
25 and, frankly, you didn't stand up and object -- but you asked

1 him, essentially, what was the testimony of one of the other
2 witnesses in the case, and you literally repeated it verbatim.
3 That is objectionable, that can't be done, and asking him to
4 affirm other evidence in the case that he doesn't have personal
5 knowledge of, he didn't sit in on one of the interviews that
6 you asked him about content, information about. And I think
7 the fact that there were other people who may have touched the
8 guns is an appropriate thing to ask, but asking for specific
9 information, I don't think that is appropriate. So, I sustain
10 that objection.

11 MS. KRASINSKI: I wasn't attempting to ask what those
12 other individuals had said, just that it impacted his decision
13 as to whether or not to send the guns off for fingerprint --

14 THE COURT: And I think, "Other witnesses touched the
15 guns," is sufficient to explain why they didn't do
16 fingerprints. Go ahead.

17 MR. FALKNER: In particular, my concern is there's no
18 dispute, I don't think, in this case that Neil Prive and Gary
19 Roya may have touched the guns, but there was some evidence
20 from Neil Prive that other people may have touched the guns,
21 but there's no evidence that the FBI had that information at
22 the time, and this line of -- that's my principal objection,
23 and that's why I'm moving to strike, and I'm concerned even
24 that the jury may need to be further instructed to disregard
25 that, because it's misleading to suggest that that

1 particularly, somehow that bolsters Neil Prive's testimony
2 because it suggests that he had given that information to the
3 FBI earlier, when there's no evidence that he had.

4 MS. KRASINSKI: Your Honor, can I just clean it up by
5 simply asking, just to make sure we're all clear, "The way I
6 understand it is you chose not to send these out for
7 fingerprinting because you understood multiple people have
8 touched the firearms"?

9 THE COURT: And what are you asking for?

10 MR. FALKNER: I'm asking --

11 THE COURT: Because you just told me there's no
12 dispute that Roya and --

13 MR. FALKNER: That Roya and Prive touched them, but
14 Prive testified that there were other people, and the way that
15 she asked that question was, "You didn't do it because Roya
16 touched them, and you didn't do it because Prive touched them,
17 and you didn't do it because other people touched them," and
18 there's no indication that they had that information, and
19 that's my concern.

20 THE COURT: Why can't you cross him on that at this
21 point?

22 MS. KRASINSKI: Also Dylan Roosa. At that point they
23 had that information that Dylan Roosa had shot the 1911.

24 THE COURT: I'm going to let you cure the issue with
25 further questioning of him, and I would suggest that you not

1 ask him to also say --

2 MS. KRASINSKI: Yes, your Honor.

3 MR. FALKNER: And may you instruct the jury at least
4 that his answer to that question is stricken?

5 THE COURT: I'm just not clear on why I need to do
6 that. Maybe I'm just --

7 MR. FALKNER: Because it was an objectionable question
8 that you're sustaining the answer to, and he answered the
9 question.

10 THE COURT: The government is suggesting that the
11 government can cure the issue. Tell me why I would need to
12 strike something from -- what exactly are you asking me to
13 strike?

14 MR. FALKNER: I didn't even hear his whole answer, but
15 he just gave an answer I think to the effect of yes or no.
16 Whatever it was, he started to answer that question, and I'm
17 just asking you to strike that answer, that the jury disregard
18 what he said.

19 (Pause)

20 THE COURT: Other people had touched the firearm, but
21 didn't Prive and others testify that friends put them into
22 safes and that kind of thing?

23 MR. FALKNER: That's what I'm saying. That's what
24 Prive testified to.

25 THE COURT: Okay.

1 MR. FALKNER: But there's no indication that Prive
2 told that to the FBI, and because there's no evidence that
3 Prive told that to the FBI this is essentially bolstering
4 Prive's testimony, because it suggests that Prive had given
5 that information to the FBI.

6 THE COURT: I just don't see that, that direct link.
7 So, I do see a problem with essentially bolstering testimony
8 and repeating hearsay testimony, but I don't think the jury is
9 going to draw that inference, and I'm going to overrule that
10 specific objection.

11 MS. KRASINSKI: And just so my clarification will be,
12 just to make sure I understand, "Your decision not to send the
13 firearms out for testing was because you had information that
14 multiple people had touched the firearms?" Is that fair?

15 MR. FALKNER: I mean, I think the only thing that is
16 undisputed is that Neil Prive and Gary Roya touched the
17 firearm, so I think if she's saying, "You didn't send it out
18 because those two individuals touched the firearms," then
19 that's fine. I'm not sure that -- well, it opens up a line of
20 cross-examination, but I think that's okay, but I'm concerned
21 with the fact that they say that there were multiple -- they
22 don't know that multiple people touched the -- -

23 THE COURT: You know the case facts way better than
24 the judge and the jury, and I can tell you that they are not
25 sitting there keeping in their minds that the FBI didn't know

1 from Prive that the roommate had put the guns into the safe at
2 a specific time. I just don't think the jury is making that
3 connection. I'm not making that connection. So, it seems to
4 me overkill. I just don't think there's any problem with it,
5 so I'm going to overrule that.

6 MS. KRASINSKI: Would you prefer for me to just move
7 on rather than -- I want to do this in a way that --

8 THE COURT: Why can't -- I mean, why can't you, as a
9 line of cross, "You just told the jury that you knew other
10 people had touched those firearms, Roya and Prive," and then
11 you can clarify the issue, because it really is a question of
12 fact that I'm just not clear on. I don't think the jury is.

13 MR. FALKNER: Well, I intend to address it in cross.
14 I do object to your failure to strike it. I think it's
15 objectionable and the answer should be stricken, and I don't
16 understand why it wouldn't be.

17 THE COURT: Okay. Overruled.

18 (END OF SIDEBAR CONFERENCE)

19 Q. Okay. Agent Tongbua, we were talking about your decision
20 not to send any of the firearms off for fingerprinting, and,
21 just generally, can you tell us why again?

22 A. Because at the point when we acquired those firearms,
23 based on the information we had, we understood that they had
24 changed hands many times up to that point.

25 MR. FALKNER: Objection and motion to strike.

1 THE COURT: Objection noted. Overruled. Go ahead.

2 Q. And were you aware at that point that two of the firearms
3 had previously belonged to the defendant?

4 MR. FALKNER: Objection.

5 A. Yes.

6 THE COURT: On what basis?

7 MR. FALKNER: Your Honor, that's hearsay, and it's not
8 within his personal knowledge.

9 THE COURT: Overruled.

10 Q. Were you aware at that point that two of the firearms had
11 previously belonged to the defendant?

12 A. Yes.

13 Q. Did that also play into the decision not to send them for
14 fingerprinting?

15 A. Yes, as it would be logical that they would have his
16 fingerprints on them.

17 Q. If his fingerprints were found on either of those two
18 firearms would you be able to tell a date, a year that those
19 fingerprints were from?

20 A. No.

21 Q. So, if, for example, a fingerprint were found on the
22 pistol, you wouldn't be able to tell if that fingerprint was
23 from 2013 or 2019?

24 A. That's correct.

25 MS. KRASINSKI: Your Honor, can I ask that the Court

1 instruct -- actually, let me just back up a little bit.

2 Q. I want to turn your attention to Government's Exhibit 37
3 that was previously admitted through Officer LeBlanc's
4 testimony, and before I ask to publish it, this is essentially
5 a recorded communication between the defendant?

6 A. Yes. If it's the recording I'm thinking of, yes.

7 Q. And showing you what has been marked for identification
8 purposes as Government's Exhibit 37a, is that a transcript that
9 was prepared of that jail clip?

10 A. Yes, it is.

11 Q. And this was prepared by a transcriptionist at FBI?

12 A. Yes.

13 MS. KRASINSKI: Your Honor, permission to publish
14 Government's Exhibit 37, and before we play it I would ask to
15 pass out the agreed-upon transcript to the jurors and have the
16 Court instruct the jurors as to the proper use of the
17 transcript.

18 THE COURT: And so, Attorney Falkner, no objection to
19 the transcript?

20 MR. FALKNER: Only the objection to the exhibit.

21 THE COURT: All right. Okay. So, while that's being
22 handed out, I'll just explain to the jury what's happening.

23 You are about to listen to a recorded call. It's been
24 received in evidence. Please listen to this recorded call very
25 carefully. You are also being given a written transcript of

1 that recorded call to help you identify speakers and listen to
2 the call. This transcript that you're handing out right now
3 and that you will have in your hands is not evidence. The
4 tape, the recorded call itself, is evidence of its own
5 contents.

Now, where there is a difference between the transcript and the recorded call, you must rely on what you hear rather than what you are reading. Transcripts of any sort of recorded conversations can be difficult to make. Whether the typewritten transcript correctly or incorrectly reflects the conversation or the identity of the speaker is entirely for you to decide based upon what you hear on this recorded call, what you hear about this preparation of the transcript and your own examination of the transcript. If you decide the transcript is incorrect or unreliable, you should disregard it to that extent. You will have the actual recorded call in the jury deliberation room as a piece of evidence.

18 So, again, go ahead and lay a foundation for playing
19 that to the jury.

20 (Audio recording played)

21 MS. KRASINSKI: Nothing further, your Honor.

22 THE COURT: All right.

23 MS. KRASINSKI: May I collect the transcripts, your
24 Honor?

25 THE COURT: Yes.

1 CROSS-EXAMINATION2 BY MR. FALKNER:

3 Q. Good afternoon, Agent Tongbua.

4 A. Good afternoon.

5 Q. Is there any other kind of agent at the FBI other than
6 Special Agent?

7 A. How do you mean?

8 Q. If you're an agent at the FBI you are a Special Agent,
9 correct?

10 A. Correct.

11 Q. That's the only kind of agent that there is, correct?

12 A. Correct.

13 Q. Now, in the course of your investigation you became aware
14 that Stephanie Irish left Johnathon Irish on or about October
15 25th, 2019, correct?

16 A. Correct.

17 Q. And from October 26th of 2019 to the present you've spoken
18 with her in person or on the phone on at least 12 different
19 occasions, correct?

20 A. Correct.

21 Q. That would be October 26th of 2019, right?

22 A. That was one date, yes.

23 Q. October 28th?

24 A. Besides that one date I can't verify any others without
25 reviewing those reports.

1 Q. Fair to say that throughout the months the last week in
2 October throughout the month of November in December and in
3 January you met on multiple occasions with Stephanie Irish,
4 correct?

5 A. I believe I've only met her in person twice. I've spoken
6 with her on the phone many times.

7 Q. Constant contact, right?

8 A. Correct.

9 Q. And she's now divorcing Johnathon Irish, correct?

10 A. That's my understanding.

11 Q. And, in your opinion, she gave information pertinent to
12 this case, correct?

13 A. I don't know that I have an opinion on the matter, but
14 much of her information has been corroborated.

15 Q. She gave you information that you found helpful?

16 A. That I found true.

17 Q. And you found helpful, too, as well, right?

18 A. It furthered our investigation, if that's what you're
19 asking.

20 Q. And when was the most recent time that you met with her?

21 A. Probably the recorded call with Roscoe Whitney.

22 Q. Didn't you meet with her in January of 2020?

23 A. Not that I recall. Can you refresh my memory?

24 MR. FALKNER: May I have a moment, your Honor?

25 (Pause)

1 MR. FALKNER: You know what? I'll move along.

2 Q. But it was at least 12 times, correct?

3 A. I had at least 12 times contact with her, yes.

4 Q. You had more contact with her than any other civilian
5 witness, correct?

6 A. In this investigation, yes.

7 Q. And, finally, fair to say, given the divorce and your
8 communications with her, that at this point there's no love
9 lost between the two?

10 A. I can't speculate on that.

11 Q. There's some animosity there, correct?

12 A. That's for those two parties to testify to, not myself.

13 Q. You weren't able to detect any animosity whatsoever of
14 Stephanie Irish towards Johnathon Irish?

15 A. They appear to have a rocky relationship.

16 Q. Now, were you part of the seizure of the firearms at Gary
17 Roya's home?

18 A. Yes.

19 Q. And you and Kevin LeBlanc traveled together to that,
20 correct?

21 A. Correct.

22 Q. And what time of the morning was that?

23 A. It was roughly -- it was probably 8:00 to 9:00 a.m. We
24 did not want to knock too early, it was not before dark, and we
25 were trying to catch him on his way to work.

1 Q. He wasn't happy to have a couple of FBI agents showing up
2 at his home just before work on the day before Thanksgiving,
3 was he?

4 A. He didn't seem unhappy. He certainly was surprised.

5 Q. Now, when you assessed the motives of the confidential
6 sources that you were working with, among other things with
7 regard to Elizabeth Millett was financial motivations, correct?
8 She felt that she was being financially drained by Johnathon
9 and Stephanie Irish?

10 A. I know she made remarks similar to that. I don't remember
11 if that was listed as a motivation for her.

12 Q. Do you not remember, or you don't believe that it's true?

13 A. I do not remember.

14 Q. Would reviewing your source opening information assist
15 you?

16 A. Yes, it would.

17 MR. FALKNER: May I approach the witness, your Honor?

18 THE COURT: Yes.

19 Q. Sir, is this a page of the opening document for her as a
20 confidential informant?

21 A. It appears to be.

22 Q. And could I just point you to a part of that document?

23 A. Sure.

24 Q. (Indicating). Did you identify as one of her motivations
25 that her father and daughter -- I'm sorry -- her daughter and

1 son-in-law are draining her financially?

2 A. I did.

3 Q. And what was the source of that information? Why did you
4 believe that that was a motive?

5 A. That was information she conveyed to me.

6 Q. Dylan Roosa also expressed a desire that he could benefit
7 from monetary compensation, correct?

8 A. Correct. I wouldn't say "desire," but his situation
9 did -- alluded to that.

10 Q. Well, let me ask it to you this way: When you put in your
11 opening document did you write that he could benefit from
12 monetary compensation?

13 A. I believe I probably wrote something similar. I wouldn't
14 say verbatim unless I reviewed it.

15 Q. Would you like to see the document?

16 A. Please.

17 Q. Is this the document that you wrote?

18 A. It appears to be.

19 Q. Vis-a-vis Dylan Roosa?

20 A. It appears to be, but there are no clear -- yes, it
21 appears to be.

22 Q. And do the words "Could benefit from monetary
23 compensation" appear on that document?

24 A. They do.

25 Q. May I have that document back? And he was signed up as an

1 informant on November 25th, correct?

2 A. I believe that date sounds right.

3 Q. And on October 5th a \$250 payment was authorized, correct?

4 A. On October 5th?

5 Q. I'm sorry. December 5th.

6 A. I don't recall the exact date, but that would make sense
7 after he was opened.

8 Q. Early December, correct?

9 A. That sounds about right.

10 Q. And that money was paid to him, correct?

11 A. What was the amount again?

12 Q. \$250.

13 A. I believe it was, yes.

14 Q. And there was another \$150 that was authorized for his use
15 of a phone, correct?

16 A. That's correct.

17 Q. Was that money paid to him?

18 A. No, it was not.

19 Q. And you haven't told him one way or the other as to
20 whether he'll be paid for the information he provided here at
21 this testimony, correct?

22 A. No, not to my knowledge.

23 Q. So, he doesn't know yet whether he's going to get paid?

24 A. I don't believe so.

25 Q. Do you know whether he's going to get paid?

1 A. I do not.

2 Q. How are you going to decide whether he gets paid?

3 A. I don't make that decision. I can only make a
4 recommendation.

5 Q. How are you going to decide whether to recommend he gets
6 paid for his testimony?

7 A. In consultation with everyone involved in the case.

8 Q. Would that be Agent LeBlanc?

9 A. Yes, as well as supervisors up my chain of command.

10 Q. And the U.S. Attorney's Office?

11 A. Correct.

12 Q. Who is prosecuting the case, correct?

13 A. Correct. I believe, yes.

14 Q. So, they also have some input as to whether Dylan Roosa
15 gets paid for his testimony here today?

16 A. I believe that's correct.

17 Q. Fingerprints -- a fingerprint on a firearm can last
18 forever, right?

19 A. I'm not a fingerprint expert, but hypothetically.

20 Q. Depending on how the firearm is stored, correct?

21 A. Sure.

22 Q. So, if I touched that firearm earlier today my
23 fingerprints might be on it, correct?

24 A. Quite possibly.

25 Q. And if it weren't cleaned and it were left for a very long

1 time my fingerprint would stay on there, right?

2 A. Hypothetically, yes.

3 Q. Fair to say when the U.S. Attorney's Office was asking you
4 questions about the fingerprinting you didn't express any
5 reservations about not being a fingerprint expert?

6 A. I was not asked.

7 Q. You were asked why you didn't take the fingerprints,
8 right?

9 A. Yes.

10 Q. And you said that the reason you didn't take the
11 fingerprints was because you believe they had changed hands
12 multiple times, right?

13 A. Yes.

14 Q. Now, as far as your investigation related to you from the
15 time the firearms left Mr. Irish's hands to the time that you
16 seized them, what you knew at the time you seized them was that
17 they had gone to Neil Prive and Gary Roya and to you, correct?

18 A. At least. That is correct.

19 Q. And you didn't know whether they had come out of the box
20 during that time, did you?

21 A. No.

22 Q. You didn't know whether Neil Prive touched the firearms?

23 A. I would have to review -- let me think about that.

24 Q. Let me ask it to you a different way. No matter what your
25 information was, you didn't actually know whether Neil Prive

1 touched the firearms, did you?

2 A. That is correct. That is correct.

3 Q. And you didn't know whether Gary Roya had touched the
4 firearms, did you?

5 A. I believe Gary had told us he had handled them, but I'm
6 not -- I would have to review that report.

7 Q. If more than one person handles a firearm there might be
8 more than one fingerprint on that firearm, right?

9 A. Sure.

10 Q. And you don't know whether the firearms were fingerprinted
11 the first time they were seized, do you?

12 A. I do not.

13 Q. And you don't know whether the firearms were cleaned
14 before they were returned to Roscoe Whitney?

15 A. Nope, I do not.

16 Q. Fair to say that if Johnathon Irish's fingerprints were on
17 that firearm it would be helpful for you to know?

18 A. I wouldn't say it's fair. Again, I would expect them to
19 be on there, but it wouldn't have proved at what point he had
20 handled them or possessed them. So, it would have benefited us
21 in no way.

22 Q. And you wouldn't have liked to have known whether
23 Stephanie Irish's fingerprints were on one or all or some of
24 those firearms?

25 A. I don't know how that would benefit.

1 Q. Well, one of the firearms that he's charged with
2 possession -- possessing in this case is the shotgun, right?

3 A. Correct.

4 Q. And the FBI didn't have knowledge that he had previously
5 owned that firearm, correct?

6 A. Correct.

7 Q. And so, if his fingerprints were on the shotgun that would
8 be of some assistance, wouldn't it?

9 A. I could say so.

10 Q. But you didn't fingerprint test that firearm, did you?

11 A. We did not.

12 Q. And if Stephanie Irish's fingerprints were on that, that
13 would be something that would be of interest, would it not?

14 A. I don't know how that would have helped us.

15 Q. Are you saying that it wouldn't help you at all in any way
16 to know if Johnathon Irish's fingerprints were on all three of
17 those firearms?

18 A. You asked about Stephanie's fingerprints, not Johnathon's.

19 Q. What if you tested all three of the firearms and all three
20 of the firearms had only Stephanie Irish's fingerprints? Are
21 you saying that wouldn't be of any assistance to you?

22 A. That wouldn't mean they weren't handled by other people.
23 You could still handle firearms with gloves on and not leave
24 fingerprints.

25 Q. I understand that. Are you saying that that information

1 would be meaningless to you?

2 A. It would indicate that she had handled them at some point
3 in the past.

4 Q. And --

5 MR. FALKNER: May I have a moment, your Honor?

6 THE COURT: You're almost done? Because it's close to
7 time to go.

8 Q. You authorized the payment to Dylan Roosa after Stephanie
9 Irish had returned home to be friends with Dylan Roosa,
10 correct?

11 A. I believe it was after she had returned home to see her
12 children, is what she told me.

13 Q. And at that point she had reestablished relations with
14 Dylan Roosa, correct?

15 A. At that point I understood she was living back at home
16 with Johnathon.

17 MR. FALKNER: Your Honor, I have nothing further.

18 THE COURT: All right. Does the government have
19 anything further? It's 5:03, I think.

20 MS. KRASINSKI: Very brief, your Honor.

21 THE COURT: All right.

22 REDIRECT EXAMINATION

23 BY MS. KRASINSKI:

24 Q. The CHS paperwork indicated that Ms. Millett felt
25 financially drained by the defendant and her daughter. Fair?

1 A. Yes.

2 Q. But she has not been offered or received any payment,
3 correct?

4 A. That is correct.

5 Q. And as for Dylan Roosa, he did receive a \$250 payment,
6 correct?

7 A. Correct.

8 Q. But you haven't submitted any authorization of funds
9 relating to his testimony, correct?

10 A. Correct.

11 Q. And we haven't had any conversations about authorizing
12 payment for his testimony, right?

13 A. No, we have not.

14 Q. Or any lay witness, right?

15 A. Correct.

16 MS. KRASINSKI: Nothing further.

17 THE COURT: All right. Anything further?

18 RECROSS-EXAMINATION

19 BY MR. FALKNER:

20 Q. Any conversations that you're going to have about payments
21 for Dylan Roosa will occur after the trial is completed,
22 correct?

23 A. If they occur, correct.

24 MR. FALKNER: Nothing further.

25 THE COURT: All right. Thank you.

Agent Tongbua, you may step down. Thank you, sir.

2 (Witness stepped down)

3 THE COURT: And we are going to break for the day. We
4 will be back tomorrow at 9:00 a.m., and my Courtroom Deputy
5 will speak to you about plans with respect to tomorrow. We
6 will go till 4:00 p.m. tomorrow. So, 9:00 a.m. to 4:00 p.m.

Follow all my instructions as you return home tonight.

8 Don't talk about the case with each other or with anyone else,
9 and follow the instructions with respect to not researching or
10 otherwise communicating about this case at all, and, of course,
11 don't read anything or look for anything about it in any sort
12 of media, blog, news, anything. If you happen to hear anything
13 or see something, completely walk away. Do not at all engage
14 with anyone about a conversation about the case. And if you do
15 see anything, alert me, let me know in the morning. Otherwise,
16 we'll see you tomorrow morning at 9:00 a.m.

17 THE CLERK: All rise for the jury.

18 (The jury exited the courtroom at 5:06 p.m.)

19 JURY NOT PRESENT

20 MR. FALKNER: May we be seen briefly at sidebar, your
21 Honor?

22 THE COURT: Yes.

23 (SIDEBAR CONFERENCE AS FOLLOWS) :

24 MR. FALKNER: Out of an abundance -- just out of an
25 abundance of caution, your Honor, Gary Roya, Sr. was in the

1 courtroom observing some testimony, and I just want to make
2 sure that Gary Roya, Jr, witness, is just made aware as a
3 result of the sequestration order he shouldn't be speaking with
4 his father about any testimony he may have heard.

5 THE COURT: Okay. All right. And the government, you
6 can obviously -- Gary Roya would be your witness; is that
7 right?

8 MS. KRASINSKI: Yes.

9 MR. FALKNER: I think Attorney Kennedy would have
10 to --

11 THE COURT: If you can alert him.

12 MS. KRASINSKI: We can alert Attorney Kennedy, yes.

13 THE COURT: And then let me know if there are any
14 follow-up issues at all.

15 MR. FALKNER: I'm not that concerned about it. Just
16 out of an abundance of caution.

17 THE COURT: Anything else at sidebar? We're obviously
18 going to talk about other issues, but there's no reason that
19 Mr. Irish should not be included in that. He doesn't have the
20 headphones on right now.

21 MS. WEILAND: This is strictly a scheduling thing. I
22 know that we'll have some matters to address. I may need to
23 excuse myself at about 5:30 due to a child care issue, so if I
24 quietly get up and excuse myself and Attorney Krasinski
25 remains, I didn't want the Court to think I was being

1 disrespectful.

2 THE COURT: No problem. Hopefully, we'll all be out
3 of here before that.

4 (END OF SIDEBAR CONFERENCE)

5 THE COURT: All right. Let me just start by asking
6 Attorney Kennedy with respect to Mr. Roya any further
7 information that would cause you concern?

8 MR. KENNEDY: Not really. I want to talk to the
9 prosecutors quickly one more time before, but I don't think --
10 I think it will be fine. I've talked with him. I went over it
11 with him. I discussed it with him on a regular basis. I asked
12 him all sorts of questions with regards to all sorts of things.

13 THE COURT: All right. I'm going to let you do that,
14 but I'm going to stay on the bench for that, because I don't
15 want to be hit with this in the morning, if there are issues,
16 and I don't want to have the jury delayed. So, I'm going to
17 let you have a moment with Attorney Kennedy. Go ahead and
18 handle that right now.

19 MS. KRASINSKI: Thank you, your Honor.

20 MR. KENNEDY: I really love the way the Federal Court
21 pushes through a jury trial.

22 (Pause)

23 THE COURT: All right. You can be here tomorrow for
24 Mr. Roya's testimony?

25 MR. KENNEDY: What time do you want me here?

1 THE COURT: I think he's going to go on at 9:00 a.m.,
2 hopefully.

3 MR. KENNEDY: Tell him to be here at quarter of 9:00?

4 THE COURT: Okay, that would be great. And any Fifth
5 Amendment issues?

6 MR. KENNEDY: We're not raising any Fifth Amendment
7 issues.

8 THE COURT: Okay. So, you don't see any Fifth
9 Amendment issues or concerns. If there were Fifth Amendment
10 issues, if somehow something comes up, is the government
11 prepared to provide immunity for those?

12 MS. KRASINSKI: I think if something came up we would
13 ask that he be voir dired outside of the presence of the jury.
14 Whether or not, just generally, we are authorized to grant
15 immunity is a broader discussion we have to have with
16 management. So, I think it would have to take two steps: one,
17 our discussion with management this evening and also
18 potentially voir diring him outside of the presence of the
19 jury.

20 THE COURT: All right. But you don't see any concerns
21 along those lines?

22 MR. KENNEDY: No. I advised him of the arguments that
23 would be made, but I don't think there's a Fifth Amendment
24 issue with him.

25 THE COURT: All right. Good. Thank you very much.

1 The Court appreciates your willingness to step in in the middle
2 of the trial on short notice. Thank you very much. And we
3 appreciate you coming tomorrow as well just to be here for his
4 testimony.

5 MR. KENNEDY: And I will be. Can I go now?

6 THE COURT: You may go now, yes. We will all go very
7 shortly. Okay. All right.

8 Expert witness instruction, I don't believe one was
9 requested. We're going to just use the model instruction.
10 Everybody okay with that? It's very bland.

11 MS. KRASINSKI: Yes, your Honor. Thank you.

12 THE COURT: You're okay with that?

13 MR. FALKNER: I don't know that I recall the specific
14 language of it, but --

15 THE COURT: "You've heard testimony from persons
16 described as experts. An expert witness has special knowledge
17 or experience that allows the witness to give an opinion. You
18 may accept or reject such testimony. In weighing the
19 testimony, you should consider the factors that generally bear
20 upon the credibility of a witness as well as the expert
21 witness's education, experience, the soundness of the reasons
22 given for the opinion and all other evidence in the case.
23 Remember that you, alone, decide how much of a witness's
24 testimony to believe and how much weight it should be given."

25 I can't believe the court reporter didn't just look at

1 me and tell me to slow down. You're just tired, right? I was
2 tired and just literally was speed reading that. I apologize.
3 So, that's --

4 MR. FALKNER: That's fine, your Honor.

5 THE COURT: Okay. We will add that to the jury
6 instructions. You will have a copy of them. I'm still
7 inclined to give the unanimity instruction. So, what we'll do
8 is we will meet tomorrow at 8:00 a.m. here. I'm not going to
9 leave any room for any lateness in terms of the jury trial
10 starting at 9:00. So, let's meet at 8:00 a.m. to go over the
11 jury instructions, and let's see if there are any other issues.
12 I do not think there are any other issues.

13 Anything else, Attorney --

14 MR. FALKNER: Looking forward in terms of scheduling,
15 just in terms of tomorrow the one more witness from the
16 government that I understand, and then --

17 THE COURT: Officer LeBlanc?

18 MR. FALKNER: After your Honor presumably denies my
19 motion for judgment of acquittal, Officer LeBlanc. If the
20 defendant were not to testify, would we just go straight into
21 arguments and charge at that point?

22 THE COURT: I think so, and that's why I do want to
23 make sure we have the jury instructions and our last charging
24 conference at 8:00 a.m. So, carefully review these one last
25 time, and we'll make any final edits before we begin. How long

1 will Mr. Roya be? Maybe an hour?

2 MS. KRASINSKI: I assume about an hour, your Honor.

3 THE COURT: About an hour. Okay.

4 MR. FALKNER: Perhaps less.

5 THE COURT: All right. I think that that covers it.

6 There is snow in the forecast for Thursday morning, and so
7 build that into your planning. If the case does go into
8 Thursday morning there will be snow, so I just alert you to
9 that. That's what I'm being told.

10 So, I will see counsel and Mr. Irish at 8:00 a.m.
11 tomorrow. Thank you.

12 THE CLERK: All rise.

13 (WHEREUPON, the proceedings adjourned at 5:18 p.m.)

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1 C E R T I F I C A T E

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4 I, Brenda K. Hancock, RMR, CRR and Official Court
5 Reporter of the United States District Court, do hereby certify
6 that the foregoing transcript constitutes, to the best of my
7 skill and ability, a true and accurate transcription of my
8 stenotype notes taken in the matter of United States v.
9 Johnathon Irish, No. 19-cr-251-01-LM.

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Date: 3/27/20

/s/ Brenda K. Hancock
Brenda K. Hancock, RMR, CRR
Official Court Reporter